HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES
HOUSE OF REPRESENTATIVES

EIGHTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 3903 and H. R. 7595

MARCH 21, 22, 23, AND 28, 1950

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COMMITTEE ON UN-AMERICAN ACTIVITIES

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TUESDAY, MARCH 21, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The committee met, pursuant to call, at 10:30 a. m. in room 226, Old House Office Building, Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood (chairman), Francis E. Walter, Burr P. Harrison, John McSweeney (arriving as noted), Morgan M. Moulder (arriving as noted), Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; John W. Carrington, clerk; William Jackson Jones, investigator; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order. The record will show that a quorum is present, consisting of Messrs. Walter, Harrison, Velde, Kearney, and Wood.

Do you have some witnesses this morning?

Mr. TAVENNER. Mr. Chairman, this morning was set aside for a legislative hearing on the legislation that is pending before this committee, consisting of H. R. 7595 and H. R. 3903.

(The bills referred to are as follows:)

[H. R. 7595, 81st Cong., 2d sess.]

A BILL To protect the United States against certain un-American and subversive activities, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Subversive Activities Control Act, 1950".

NECESSITY FOR LEGISLATION

SEC. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary political movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in all the countries of the world through the medium of a single world-wide Communist political organization.

(2) The establishment of a totalitarian dictatorship in any country results in the ruthless suppression of all opposition to the party in power, the complete subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by an identity between such party and its policies and the government and governmental policies of the country in which it exists, such identity being so close that the party and the government itself are for all practical purposes indistinguishable.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, political organizations which are acknowledged by such Communist dictatorship as being constituent elements of the world Communist movement; and such political organizations are not free and independent organizations, but are mere sections of a single world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The political organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such Communist political organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6), such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of members, representatives, and agents from country to country is essential for purposes of communication and for the carrying on of activities to further the purposes of the movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement; and, in countries other than the United States, those individuals who knowingly and willfully participate in such Communist movement similarly repudiate their allegiance to the countries of which they are nationals in favor of such foreign Communist country.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the traditional Communist methods referred to above, and in accordance with carefully conceived plans, already caused the establishment in numerous foreign countries, against the will of the people of those countries, of ruthless Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear

and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "person" means an individual or an organization.

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist political organization" means any organization in the United States having some, but not necessarily all, of the ordinary and usual characteristics of a political party, which (A) is substantially dominated or controlled by the foreign government or foreign governmental or political organization controlling the world Communist movement referred to in section 2, and (B) operates primarily to advance the objectives of such world Communist movement, as set forth in section 2 of this Act.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist political organization and other than a lawfully organized political party which is not a Communist political organization) which (A) is under the control of a Communist political organization, or (B) is primarily operated for the purpose of giving aid and support to a Communist political organization, a Communist foreign government, or the world Communist movement referred to in section 2.

(5) The term "Communist organization" means a Communist political organization or a Communist-front organization.

(6) The term "publication" means any circular, newspaper, periodical, pamphlet, book, letter, post card, leaflet, or other publication.

(7) The term "United States," when used in a geographical sense, includes the several States, Territories, and possessions of the United States, the District of Columbia, and the Canal Zone.

(8) The term "interstate or foreign commerce" means trade, traffic, commerce, transportation, or communication (A) between any State, Territory, or possession of the United States (including the Canal Zone), or the District of Columbia, and any place outside thereof, or (B) within and Territory or possession of the United States (including the Canal Zone) or within the District of Columbia.

(9) The term "Board" means the Subversive Activities Control Board created by section 13 of this Act.

(10) The term "final order of the Board" means an order issued by the Board under section 14 of this Act, which has become final as provided in section 15 of this Act.

CERTAIN PROHIBITED ACTS

SEC. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization or foreign individual. For purposes of this subsection, the term "totalitarian dictatorship" means a form of government, characterized by (1) the existence of a single political party, with such identity between such party and its policies and the government and governmental policies of the country in which it exists as to render such party and the government itself indistinguishable for all practical purposes, and (2) the forcible suppression of all opposition to such party.

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or

representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this Act, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specially authorized by the head of such department, agency, or corporation to make such disclosure of such information.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this Act, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in part by the United States or any department or agency thereof, any information of a kind which shall have been classified pursuant to subsection (b) of this section as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(e) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations.

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute a violation of subsection (a) or subsection (c) of this section. The fact of the registration of any person under section 7 or section 8 of this Act as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section.

EMPLOYMENT OF MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 5. (a) When an organization is registered, or there is in effect a final order of the Board requiring an organization to register, as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final—

(1) in seeking or accepting any office or employment under the United States, to conceal the fact that he is a member of such organization; or

(2) to hold any nonelective office or employment under the United States.

(b) When an organization is registered, or there is in effect a final order of the Board requiring an organization to register, as a Communist political organization, it shall be unlawful for any officer or employee of the United States to appoint or employ any individual as an officer or employee of the United States, knowing that such individual is a member of such an organization.

(c) As used in this section, the term "member" shall not include any individual whose name has not been made public because of the prohibition contained in section 9 (b) of this Act.

DENIAL OF PASSPORTS TO MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 6. (a) When an organization is registered, or there is in effect a final order of the Board requiring an organization to register, as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

(b) When an organization is registered, or there is in effect a final order of the Board requiring an organization to register, as a Communist political organization, it shall be unlawful for any officer or employee of the United States to issue a passport to, or renew the passport of, any individual knowing or having reason to believe that such individual is a member of such organization.

(c) As used in this section, the term "member" shall not include any individual whose name has not been made public because of the prohibition contained in section 9 (b) of this Act.

REGISTRATION AND ANNUAL REPORTS OF COMMUNIST ORGANIZATIONS

SEC. 7. (a) Each Communist political organization (including any organization required, by a final order of the Board, to register as a Communist political organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist political organization.

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

(c) The registration required by subsection (a) or (b) shall be made—

(1) in the case of an organization which is a Communist political organization or a Communist-front organization on the date of the enactment of this Act, within thirty days after such date;

(2) in the case of an organization becoming a Communist political organization or a Communist-front organization after the date of the enactment of this Act, within thirty days after such organization becomes a Communist political organization or a Communist-front organization, as the case may be; and

(3) in the case of an organization which by a final order of the Board is required to register, within thirty days after such order becomes final.

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and last-known address of each individual who is at the time of the filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

(4) In the case of a Communist political organization, the name and last-known address of each individual who was a member of the organization at any time during the period of twelve full calendar months preceding the filing of such statement.

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

(2) It shall be the duty of each Communist political organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records of the names and addresses of the members of such organization and of persons who actively participate in the activities of such organization.

(g) It shall be the duty of the Attorney General to send to each individual listed in any registration statement or annual report, filed under this section, as an officer or member of the organization in respect of which such registration statement or annual report was filed, a notification in writing that such individual is so listed; and such notification shall be sent at the earliest practicable time after the filing of such registration statement or annual report. Upon written request of any individual so notified who denies that he holds any office or membership (as the case may be) in such organization, the Attorney General shall forthwith initiate and conclude at the earliest practicable time an appropriate investigation to determine the truth or falsity of such denial, and, if the Attorney General shall be satisfied that such denial is correct, he shall thereupon strike from such registration statement or annual report the name of such individual. If the Attorney General shall decline or fail to strike the name of such individual from such registration statement or annual report within five months after receipt of such written request, such individual may file with the Board a petition for relief pursuant to section 14 (b) of this Act.

(h) In the case of failure on the part of any organization to register or to file any registration statement or annual report as required by this section, it shall be the duty of the executive officer (or individual performing the ordinary and usual duties of an executive officer) and of the secretary (or individual performing the ordinary and usual duties of a secretary) of such organization, and of such officer or officers of such organization as the Attorney General shall by regulations prescribe, to register for such organization, to file such registration statement, or to file such annual report, as the case may be.

REGISTRATION OF MEMBERS OF COMMUNIST POLITICAL ORGANIZATIONS

SEC. 8. Each individual who is a member of any organization which he knows to be registered as a Communist political organization under section 7 (a) of this Act, but which has failed to include his name upon the list of members thereof filed with the Attorney General, shall within sixty days after he shall have obtained such knowledge register with the Attorney General as a member of such organization. The registration made by such individual shall be accompanied by a registration statement, to be prepared and filed in such manner and form, and containing such information, as the Attorney General shall by regulations prescribe.

KEEPING OF REGISTERS; PUBLIC INSPECTION; REPORTS TO PRESIDENT AND CONGRESS

SEC. 9. (a) The Attorney General shall keep and maintain separately in the Department of Justice—

(1) a "Register of Communist Political Organizations", which shall include (A) the names and addresses of all Communist political organizations registered under section 7, (B) the registration statements and annual reports filed by such organizations thereunder, and (C) the registration statements filed by individuals under section 8; and

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection: *Provided*, That the Attorney General shall not make public the name of any individual listed in either such register as an officer or member of any Communist organization until sixty days shall have elapsed after the transmittal of the notification required by section 7 (g) to be sent to such individual, and if prior to the end of such period such individual shall make written request to the Attorney General for the removal of his name from any such list, the Attorney General shall not make public the name of such individual until six months shall have elapsed after receipt of such request by the Attorney General, or until thirty days shall have elapsed after the Attorney General shall have denied such request and shall have transmitted to such individual notice of such denial, which ever is earlier.

(c) The Attorney General shall submit to the President and to the Congress on or before June 1 of each year (and at any other time when requested by either House by resolution) a report with respect to the carrying out of the provisions of this Act, including the names and addresses of the organizations listed in such registers and (except to the extent prohibited by subsection (b) of this section)

the names and addresses of the individuals listed as members of such organizations.

MEMBERSHIP IN CERTAIN COMMUNIST POLITICAL ORGANIZATIONS

SEC. 10. It shall be unlawful for any individual to become or remain a member of any organization if he knows that (1) there is in effect a final order of the Board requiring such organization to register under section 7 of this Act as a Communist political organization, (2) more than thirty days have elapsed since such order became final, and (3) such organization is not registered under section 7 of this Act as a Communist political organization.

USE OF THE MAILS AND INSTRUMENTALITIES OF INTERSTATE OR FOREIGN COMMERCE

SEC. 11. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: "Disseminated by ————————, a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ————————, a Communist organization."

DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS

SEC. 12. (a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7.

SUBVERSIVE ACTIVITIES CONTROL BOARD

SEC. 13. (a) There is hereby established a Board, to be known as the Subversive Activities Control Board, which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. One of the original members shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, but their successors shall be appointed for terms of three years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to the Congress and to the President stating in detail the cases it has heard,

the decisions it has rendered, the names, salaries, and duties of all employees of the Board, and an account of all moneys it has disbursed.

(d) Each member of the Board shall receive a salary of $12,500 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(e) It shall be the duty of the Board—

(1) upon application made by the Attorney General under section 14 (a) of this Act, or by any organization under section 14 (b) of this Act, to determine whether any organization is a "Communist political organization" within the meaning of paragraph (3) of section 3 of this Act, or a "Communist-front organization" within the meaning of paragraph (4) of section 3 of this Act; and

(2) upon application made by the Attorney General under section 14 (a) of this Act, or by any individual under section 14 (b) of this Act, to determine whether any individual is a member of any Communist political organization registered, or by final order of the Board required to be registered, under section 7 (a) of this Act.

(f) Subject to the civil-service laws and Classification Act of 1923, as amended, the Board may appoint and fix the compensation of a clerk and such examiners and other personnel as may be necessary for the performance of its functions.

(g) The Board may make such rules and regulations, not inconsistent with the provisions of this Act, as may be necessary for the performance of its duties.

(h) There are hereby authorized to be appropriated to the Board such sums as may be necessary and appropriate to carry out its functions.

PROCEEDINGS BEFORE BOARD

SEC. 14. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this Act is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this Act is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be.

(b) Any organization registered under subsection (a) or subsection (b) of section 7 of this Act, and any individual registered under section 8 of this Act, may, not oftener than once in each calendar year, make application to the Attorney General for the cancellation of such registration and (in the case of such organization) for relief from obligation to make further annual reports. Within sixty days after the denial of any such application by the Attorney General, the organization or individual concerned may file with the Board and serve upon the Attorney General a petition for an order requiring the cancellation of such registration and (in the case of such organization) relieving such organization of obligation to make further annual reports. Any individual authorized by section 7 (g) of this Act to file a petition for relief may file with the Board and serve upon the Attorney General a petition for an order requiring the Attorney General to strike his name from the registration statement or annual report upon which it appears.

(c) Upon filing of any petition pursuant to subsection (a) or subsection (b) of this section, the Board (or any member thereof or any examiner designated thereby) may hold hearings, administer oaths and affirmations, may examine witnesses and receive evidence at any place in the United States, and may require by subpena the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed relevant to the matter under inquiry. Subpenas may be signed and issued by any member of the Board or any duly authorized examiner. Subpenas shall be issued on behalf of the organization or the individual who is a party to the proceeding upon request and upon a statement or showing of general relevance and reasonable scope of the evidence sought. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. Witnesses summoned shall be paid the same fees and mileage paid witnesses in the district courts of the United States. In case of disobedience to a subpena the Board may invoke the aid of any court of the United States in requiring the attendance and testimony of wit-

nesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear (and to produce documentary evidence if so ordered) and give evidence relating to the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(d) All hearings conducted under this section shall be public. Each party to such proceeding shall have the right to present its case with the assistance of counsel, to offer oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. An accurate stenographic record shall be taken of the testimony of each witness, and a transcript of such testimony shall be filed in the office of the Board.

(e) In determining whether any organization is a "Communist political organization," the Board shall take into consideration—

(1) the extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign governmental or political organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this Act;

(2) the extent to which its views and policies do not deviate from those of such foreign government or foreign organization;

(3) the extent to which it receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization;

(4) the extent to which it sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement;

(5) the extent to which it reports such foreign government or foreign organization or to its representatives;

(6) the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives;

(7) the extent to which (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis; and

(8) the extent to which its principal leaders or a substantial number of its members consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization.

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the political objectives of any Communist political organization, Communist foreign government or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist political organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this Act; or

(2) that an individual is a member of a Communist political organization (including an organization required by final order of the Board to register under section 7 (a)), it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order requiring him to register as such under section 8 of this Act.

(h) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order denying his petition for an order requiring such organization to register as such under section 7 of this Act; and send a copy of such order to such organization; or

(2) that an individual is not a member of any Communist political organization, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order denying his petition for an order requiring such individual to register as such member under section 8 of this Act; and send a copy of such order to such individual.

(i) If, after hearing upon a petition filed under subsection (b) of this section, the Board determines—

(1) that an organization is not a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order requiring him to cancel the registration of such organization and relieve it from the requirement of further annual reports; and send a copy of such order to such organization; or

(2) that an individual is not a member of any Communist political organization, or (in the case of an individual listed as an officer of a Communist-front organization) that an individual is not an officer of a Communist-front organization, it shall make a report in writing in which it shall state its findings as to the facts; issue and cause to be served upon the Attorney General an order requiring him to (A) strike the name of such individual from the registration statement or annual report upon which it appears or (B) cancel the registration of such individual under section 8, as may be appropriate; and send a copy of such order to such individual.

(j) If, after hearing upon a petition filed under subsection (b) of this section, the Board determines—

(1) that an organization is a Communist political organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order denying its petition for the cancellation of its registration and for relief from the requirement of further annual reports; or

(2) that an individual is a member of a Communist political organization, or (in the case of an individual listed as an officer of a Communist-front organization) that an individual is an officer of a Communist-front organization, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order denying his petition for an order requiring the Attorney General (A) to strike his name from any registration statement or annual report on which it appears or (B) to cancel the registration of suhc individual under section 8, as the case may be.

JUDICIAL REVIEW

SEC. 15. (a) The party aggrieved by any order entered by the Board under subsection (g), (h), (i), or (j) of section 14 may obtain a review of such order

in the United States Court of Appeals for the District of Columbia by filing in the court, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the Board. Thereupon the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the sataisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence, shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. If the court shall set aside an order issued under subsection (j) of section 14 it may, in the case of an organization, enter a judgment canceling the registration of such organization and relieving it from the requirement of further annual reports, or in the case of an individual, enter a judgment requiring the Attorney General (A) to strike the name of such individual from the registration statement or annual report on which it appears, or (B) cancel the registration of such individual under section 8, as may be appropriate. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in title 28, United States Code, section 1254.

(b) Any order of the Board issued under section 14 shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the Board has been affirmed or the petition for review dismissed by the United States Court of Appeals for the District of Columbia; or

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Board be affirmed or the petition for review dismissed.

PENALTIES

SEC. 16. (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this Act—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not less than $2,000 and not more than $5,000; and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not less than $2,000 and not more than $5,000, or imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

For the purpose of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, wilfully makes any false statement or wilfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not less than $2,000 and not more than $5,000, or by imprisonment of not less than two years and not

more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed a separate statement.

(c) Any organization which violates any provision of section 11 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than $2,000 and not more than $5,000. Any individual who violates any provision of section 5, 6, 10, or 11 of this Act shall, upon conviction thereof, be punished for each such violation by a fine of not less than $2,000 and not more than $5,000, or by imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 17. Nothing in this Act shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this Act, except to the extent that this Act affords additional procedural safeguards for organizations and individuals.

SEPARABILITY OF PROVISIONS

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[H. R. 3903, 81st Cong. 1st sess.]

A BILL To combat un-American activities by making it unlawful for Federal employees and for individuals employed in connection with national defense contracts to be members of, or affiliated with, the Communist Party or certain other subversive organizations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any officer or employee of the United States—

(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General;

(2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or

(3) to advise, counsel, or urge any other officer or employee of the United States to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of this section.

SEC. 2. It shall be unlawful for any individual employed in connection with the performance of any national defense contract—

(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General;

(2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or

(3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of this section.

SEC. 3. Whoever violates any provision of this Act shall be fined not more than $3,000, or imprisoned for not more than three years, or both.

SEC. 4. (a) For the purposes of this Act, an organization shall have been designated as subversive by the Attorney General if—

(1) pursuant to Executive Order Numbered 9835 (Code of Federal Regulations, 1947 Supp., book 1, page 129), such organization has heretofore been or is hereafter designated by the Attorney General as being totalitarian,

fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means; and

(2) no cancellation of such designation shall have been published in the Federal Register—

with the exception that where, on or after the date of the enactment of this Act, any organization is so designated, it shall not be deemed to have been designated as subversive by the Attorney General for the purposes of this Act until the thirty-first day following the date on which notice of such designation is published in the Federal Register.

(b) The Attorney General shall take such steps as may be necessary to insure that all officers and employees of the United States, and all individuals employed in connection with the performance of national defense contracts, shall be given reasonable opportunity to learn the names of organizations which shall have been designated as subversive by the Attorney General.

SEC. 5. As used in this Act—

(1) The term "officer or employee of the United States" includes officers and employees of corporations wholly owned by the United States.

(2) The term "organization" includes any foreign or domestic organization, association, movement, or group or combination of persons.

(3) The term "to contribute funds or services" includes the rendering of any personal service and the making of any gift, subscription, loan, advance, or deposit, of money or of anything of value, and includes the making of any contract, promise, or agreement to contribute funds or services, whether or not legally enforcible.

(4) The term "national defense contract" includes any contract with the United States, or any department or agency thereof, or any corporation wholly owned by the United States, for the manufacture or production of arms, armament, ammunition, munitions, or parts thereof, intended for the use of the United States in connection with the national defense.

SEC. 6. The first three sections of this Act shall take effect on the thirty-first day following the day on which this Act is enacted.

Mr. TAVENNER (continuing). We have a letter from Mr. Peyton Ford, the Assistant to the Attorney General, expressing his regret at not being able to appear in person but sending a written statement; and then we have one additional witness this morning.

(Representative Moulder enters hearing room.)

Mr. WOOD. I think probably it would be better to read his statement into the record.

Mr. TAVENNER. I might say, Mr. Chairman, that this statement arrived only a half hour ago, and we have endeavored to run off a few copies on a typewriter, and I think there is a copy on the desk for the members, and we have some available, I think, for the press.

Mr. WOOD. I don't think there is any on the desk.

Mr. VELDE. I have one that was handed to me.

STATEMENT OF PEYTON FORD, THE ASSISTANT TO THE ATTORNEY GENERAL OF THE UNITED STATES

(Read by Mr. Tavenner:)

MARCH 21, 1950.

Hon. JOHN WOOD,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your letters of March 2 and 9, 1950, requesting the views of this Department relative to H. R. 3903 and H. R. 7595, in connection with which your committee has scheduled hearings beginning March 21.

H. R. 3903 would forbid any United States officer or employee or "any individual employed in connection with" national defense contracts to be or become

a member of or contribute funds or services to the Communist Party or any organization designated as subversive by the Attorney General, or to advise, counsel, or urge other such persons to do or omit to do any of these prescribed acts.

An organization would be considered subversive under the bill if the Attorney General has designated it as such under Executive Order 9835 and there has been no publication of the cancellation of the designation, or, following the enactment of the bill, when 31 days have elapsed following the publication of such a designation by the Attorney General. The Attorney General is directed to take such steps as are necessary to see that all persons covered by the bill are given a reasonable opportunity to learn the names of designated organizations.

Under the definitions contained in the bill, the term "organization" includes foreign as well as domestic organizations; "to contribute funds or services" includes the contribution of personal services and the promise to make any contribution, whether the promise is legally enforceable or not; and "national defense contract" includes any contract with the United States or its agencies involving the manufacture of arms or munitions for national defense.

A penalty section subjects violators to a $3,000 fine, 3 years imprisonment, or both.

H. R. 7595, except for the addition of section 4 (f), which relates to evidence, and a phrase in sections 5 and 6 relating to registering organizations, is identical with S. 2311 which was introduced by Senator Mundt in the first session of the Eighty-first Congress.

(Representatives Walter and Kearney leave hearing room.)

H. R. 7595 would be cited as the Subversive Activities Control Act, 1950, whereas S. 2311 carried the same title with the designation of the year "1949." In response to the request of the chairman of the Senate Judiciary Committee, this Department submitted views regarding S. 2311 on January 4, 1950. Since there is no substantial change in the bill, you may regard that report as representing this Department's views on H. R. 7595. I am therefore enclosing for the information of your committee a copy of the report of January 4, together with a copy of the earlier letter, dated June 16, 1948, to which reference is made therein, in which Attorney General Tom C. Clark discussed the similar Mundt-Nixon bill of the Eightieth Congress in considerable detail.

(Representative Walter returns to hearing room.)

In this connection I take the liberty of calling attention to letters dated June 7 and June 8, 1948, respectively, from Mr. John W. Davis and Mr. Charles Evans Hughes, Jr., addressed to the chairman of the Senate Committee on the Judiciary, each of which contains rather extensive comments upon the same bill (Hearings, Committee on the Judiciary, United States Senate, H. R. 5852, 80th Cong., pp. 415–422).

In your committee's consideration of H. R. 3903, it would seem well to bear in mind that while the courts have sustained the right of the United States Government to employ such persons as it chooses and to prescribe qualifications and place appropriate conditions and restraints upon their employment (*Friedman* v. *Schwellenbach*, 159 F. 2d 22, cert. den. 330 U. S. 838), a different situation exists when it is sought to extend such restraints to private citizens generally as contemplated in section 2 of the bill. The limitations imposed by this bill, which have the effect of inflicting punishment upon named groups without jury trial, should, moreover, be carefully considered in the light of the decision in *United States* v. *Lovett* (328 U. S. 303), where the Supreme Court construed the constitutional prohibition against bills of attainder and stated that the "permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type" (p. 318). In this same connection, consideration should also be given to the fact that the bill contains no legislative finding that the activities proscribed present a clear and present danger to the security of the United States. In the absence of such a finding, it is doubtful that the bill would withstand a judicial test as to its constitutionality. Indeed, even were such a finding added to the bill, it is by no means certain that its constitutionality could be upheld.

The important distinction between administrative measures to screen out disloyal employees or persons seeking employment in Government, such as are now utilized under Executive Order 9835, and legislation which would adopt, as in section 4 of the bill, such administrative designations for the purposes

described in H. R. 3903, should also be carefully noted. A world of difference exists, from the standpoint of sound policy and constitutional validity, between making, as the bill would, membership in an organization designated by the Attorney General a felony, and recognizing such membership, as does the employee loyalty program under Executive Order 9835, as merely one piece of evidence pointing to possible disloyalty. The bill would brand the member of a listed organization a felon, no matter how innocent his membership; the loyalty program enables the member to respond to charges against him and to show, in a manner consistent with American concepts of justice and fairness, that his membership is innocent and does not reflect upon his loyalty.

The activities of Federal employees attempted to be covered by the bill appear to be restricted adequately by section 9A of the Hatch Act (5 U. S. C. 118(j)) and by the loyalty program administered under Executive Order 9835. It is believed that the Department of Defense and the Atomic Energy Commission have also adopted certain precautionary measures covering activities of employees of those holding contracts connected with the national defense. In addition, the Smith Act (18 U. S. C. 2385) makes it a crime to advocate the overthrow of the Government of the United States by force or violence. It does not appear, therefore, necessary, even if constitutionally possible, to add to existing law and regulations at the present time a penal statute such as proposed in the bill.

The foregoing comments represent the considered views of this Department, having in mind that it is the duty of the Attorney General to protect the rights of individuals guaranteed by the Constitution, as well as to protect the Government from subversion. From the latter standpoint, it should be emphasized that this Department is in complete sympathy with the efforts of the Congress to enact legislation which will serve the needs of the Government for protection against subversion. In that connection we have noted with considerable satisfaction the action taken by the House of Representatives on March 15, 1950, in passing by an overwhelming vote H. R. 4703, a bill relating to the internal security of the United States. That bill, as you know, was drawn after careful consideration of the recommendations of the Interdepartmental Intelligence Committee, composed of representatives of the Military Intelligence Division of the Department of the Army, the Office of Naval Intelligence, and the Federal Bureau of Investigation, and contains provisions for which the need has been demonstrated by the experiences of World War II and the postwar period.

On February 5, 1948, Attorney General Tom C. Clark discussed that proposal with your committee while it was still in preparation. You may recall that on that occasion he urged the need of the bill that was being prepared for strengthening the arm of the Government in dealing with espionage activities. In that connection he made a number of concrete suggestions regarding helpful legislation, and at the same time directed the attention of your committee to the earlier testimony of the Director of the Federal Bureau of Investigation, in which the latter advised caution in the consideration of any legislation which would specifically deal with the Communist Party in such a way as to enable Communists to portray themselves as martyrs. This Department again urges the prompt passage by the Congress of H. R. 4703 as of the first importance.

(Representative McSweeney enters hearing room.)

It has been and will continue to be the policy of this Department to deal with the Communist Party by proceeding within the judicial process by means of carefully planned prosecutions and by that method to obtain in an orderly way the approval of the courts of our efforts. Appeals from the recent conviction in New York of 11 Communist leaders have been set for argument in the Court of Appeals for the Second Circuit in June. At that time some of the most important of the constitutional questions raised by the existing legislation and by bills now pending before your committee will be submitted for determination. The decision in that case will be a most important one and action which may prove to be premature in the light of its outcome should be carefully weighed.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

Mr. TAVENNER. There is attached to the letter the report of June 16, 1948, addressed to Hon. Alexander Wiley, chairman, Committee on

the Judiciary, United States Senate, which is signed by Tom C. Clark, Attorney General, and which can be found in the report made on S. 2311, which has been printed.

I do not know whether you desire me to read this report, which is applicable to H. R. 7595, or not.

Mr. Wood. I don't believe that will be necessary, unless members of the committee desire it read.

Mr. Tavenner. There is also attached a letter of January 4, 1950, addressed to Hon. Pat McCarran, relating also to S. 2311, which, for the same reason, I suppose I should just file?

Mr. Wood. Yes.

Mr. Walter. Have you that Senate report there?

Mr. Tavenner. What I have is a preliminary draft of it, and not the final printing of it.

I would like to call at this time Dr. Emerson P. Schmidt.

Dr. Schmidt. Mr. Chairman, gentlemen of the committee.

Mr. Tavenner. Dr. Schmidt, I would like you to be sworn first.

Mr. Wood. You solemnly swear the evidence you give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. Schmidt. I do.

TESTIMONY OF DR. EMERSON P. SCHMIDT

Mr. Tavenner. Will you please state your full name?

Dr. Schmidt. I am Emerson P. Schmidt, director of economic research, Chamber of Commerce of the United States of America, Washington, D. C. I have been in charge of the chamber's anti-Communist work for a number of years, although I do not profess to be an expert on all these matters, as you gentlemen are.

I think you have copies of my statement.

Mr. Tavenner. Dr. Schmidt, before you begin with your statement I would like to ask you a question which seems to be the accepted procedure both in the Senate and in the House when testifying on matters of this kind. Are you a member of the Communist Party, or have you ever been a member of the Communist Party?

Dr. Schmidt. No, I am not and never have been a member of the Communist Party.

Mr. Tavenner. Proceed with your statement.

Dr. Schmidt. In connection with the chamber's anti-Communist work, we have issued four reports: Communist Infiltration in the United States, Communists Within the Government, Communists Within the Labor Movement, and A Program for Community Anti-Communist Action.

These reports have enjoyed a circulation of over one million copies. The Communist Party has repeatedly attributed the deep trouble in which it finds itself to the work of the Chamber of Commerce, which is very flattering to us, of course. The Daily Worker, February 23, 1947, in a calculated analysis of the chamber's second report, Communists Within the Government, stated:

> First there is underway a skillful campaign to make communism * * * the major issue before the Nation. Second, the campaign is rather effective * * * to recognize how effective the Red scare campaign has been is not defeatism * * * it is sober realism.

The Daily Worker devoted at least five full pages and many editorials to analyses of our reports. It tried to provide its readers and fellow travelers with counterarguments and answers. I mention this matter because it shows the high importance and the effectiveness of the work against communism which has been carried on, not only by us but by a great many other patriotic groups and individuals.

Your committee, Mr. Chairman, has issued some excellent research studies and educational pamphlets and we hope that you will continue this educational work. Any legislation on this problem must have a strong widespread educational foundation of the conspiratorial, ruthless, materialistic, and antireligious character of communism.

We are glad to have the opportunity to present our views on H. R. 3903 and H. R. 7595. The first would prohibit the employment of Communists by the Government, and the second would provide for the registration and exposure of certain Communist organizations as well as prohibit certain acts. In general, we favor the basic principles of these bills and hope that you will do everything in your power to see that adequate legislation is adopted by the House.

Almost exactly 3 years ago, March 26, 1947, I testified before this committee. There is a close similarity between the provisions of H. R. 3903 and H. R. 7595 as you have drafted them and our recommendations.

Whether Chairman Wood's bill (H. R. 3903) is necessary in the light of section 5 in H. R. 7595 can perhaps be much better judged by you and your staff than by us. I do, however, want to quote from my testimony of March 26, 1947 (hearings, p. 226, March 24–28, 1947), in which we said:

> The chamber's second report, Communists Within the Government, furnished considerable detail on Communist penetration within the Government service.
>
> First, it should be pointed out that no person has a right to a job on the Federal payroll. The Government, as an employer, has a right to establish its own standards and conditions of employment, just as it established employment conditions of private employers who furnish the Government with supplies and who do construction work for it under the Walsh-Healey Act and the Davis-Bacon Act. In the *Morton Friedman case* (cert. den. 330 U. S. 838) the Supreme Court, by refusing to interfere with a lower court decision upholding the right of the Civil Service Commission to discharge an employee on the grounds of sympathy with communism, appears to have settled the question of the right of the Government to establish its own standards of employment in the Government service.

Turning now to H. R. 7595, the Chamber of Commerce has never believed it wise to outlaw the Communist Party and its innumerable fronts and transmission belts, partly for constitutional reasons and partly for reasons of the effective handling of this problem. We believe that this bill represents the correct approach. In our testimony 3 years ago (hearings, pp. 223 to 226), we said:

> Outlawing the party and similar organizations * * * might call for a vast counterespionage staff to enforce the law. There is reason to believe that outlawing the party would drive underground still further many of the Communist activities. It would make the party functionaries more subtle, more discreet and conceivably even more effective. It might give them a rallying cry, and further solidify and cement them. It might make "martyrs" of the Communists and might cause many persons to come to their rescue. Outlawing the party might conceivably give us a false sense of complacency, knowing that we have passed a law * * *. For these reasons, the board of directors of the Chamber

of Commerce of the U. S. A. questions the wisdom of outlawing the party at this time.

We think that this is still sound analysis.

In our report, Communists Within the Government, page 29, we said:

The Department of Justice should rule officially that the Communist Party, U. S. A., is an agent of a foreign power and subject to the provisions of the Voorhis Act and the Logan Act.

In my testimony 3 years ago, I said:

The Voorhis Act requires the registration of proved foreign agents with the United States Government, with a full statement of their activities, revenues, expenditures, membership lists and the like. This requirement could be extended to the party's affiliates, fronts, transmission belts, printing, and mimeographing "businesses," and other apparatus owned or controlled by the party.

The Logan Act prohibits, and provides punishment for, conspiracy by American citizens and foreign agents, helping foreign agents to influence relations between the United States and any foreign government, and the attempt to defeat measures taken by the United States in the course of such relations. The law also applies to those who counsel, advise, or assist in such operations. Actually the top officials of the American Communist Party have consistently engaged in activities which are forbidden by this law. The Department of Justice can compile evidence to show such violations. Prosecutions under this act would unmask the party and show it in its real light: An instrument whereby American citizens have become agents of a foreign power and traitors to their own Government.

At that time I further said:

If under these laws, in addition, the Justice Department, perhaps with the aid of this committee, could publish semiannual lists of fronts and their members, transmission belts and other apparatus under the control of the Communist Party (however its name may be changed), this would go a long way to smoke out the Communists, then few decent self-respecting citizens would have anything to do with them.

I am referring to these publications of the chamber and our former testimony to show that we have favored for some time the principles which you have now put into bill form, especially H. R. 7595.

To indicate further the character of our thinking, from which we do not now deviate, let me quote again (hearings, p. 225):

For the sake of the record we would like to bring before you a number of other legal steps which * * * may merit consideration. Broadly, these steps would limit the Communist Party, its fronts and its members, to a semilegal status.

Under this proposal all Communist aliens would be invited to leave the country. They would not be eligible for citizenship just as we already deny citizenship to polygamists and anarchists. How can a member of the Communist Party, U. S. A., honestly subscribe to the oath of citizenship? Evidently, from experience before this committee, the granting of visas and passports also could be greatly tightened.

Communists, being agents of a foreign power, could be legally barred from representing clients or any group before official labor and other boards where their primary interest is trouble making. All Communists could be required to register with a central agency, including all their aliases. They could be barred from belonging to two or more political parties—a source of constant confusion and infiltration. Communists Parties, their fronts and transmission belts, could be refused exemption from income and other taxation, on the ground that they are not typical nonprofit, educational, or charitable organizations engaged in public welfare work, the usual and legitimate ground for tax exemption. All Communist literature (including films, radio broadcasts, and bookshops) as well as those of Communist fronts, could be required to be clearly labeled "Communist" just as businessmen are required to properly label foods, drugs, and other products. Second-class mailing privileges, or all mailing privileges, could

be withdrawn unless such identification appears on the outside of the wrapper or envelope as well as on all contents * * * . All Communist writers could be required to disclose their original names on every signed article.

We believe that H. R. 7595 closely accords with our recommendations and for this reason we urge the passage of this bill.

We think that the bill commends itself particularly because of its moderation and its conspicuous attempt to protect innocent individuals and organizations. We urge most strongly that these protective features be preserved. Our traditions are peculiarly individualistic. We think that the individual must be protected at all times by law from any and all undue molestation or interference by Government. Again and again H. R. 7595 furnishes the individual extensive protection, particularly section 4 (f), section 7 (g), section 9 (b), and others. The Communists and their dupes are vigorously attacking this bill on the ground of invading personal liberties. By securing the protection of the individual without any publicity of his name until he has had a chance to challenge the inclusion of his name in a Communist political organization registration statement, you are effectively undermining these spurious criticisms.

To undermine further the criticisms of the Communists, we would like to raise the question whether it would be practical to make the act apply to Fascists and Nazis or any other agents of any other foreign power engaged in activities closely similar to those described in section 2 of H. R. 7595. While few people are today concerned about this phase of the matter, it would help prevent your committee and the Government of the United States being labeled as "Fascist" by Communists and their dupes. Whether this is a practical idea or not we will leave for your consideration.

Recent Communist trials have demonstrated the restrictiveness of our present statute of limitations. We would favor section 4 (e), which extends the statute of limitations to 10 years for violations of certain specified acts. Ordinarily we would not favor lengthening the statute of limitations, but with the very security of our Nation at stake, we think the proposed extension is reasonable. Whether the passage by the House of H. R. 4703 on March 15 makes section 4 of H. R. 7595 unnecessary is a matter for your experts to determine.

We would like further to urge that when this bill is discussed on the floor of the legislative branches of our Government that no stone be left unturned in an effort to emphasize the importance of this issue. Such analysis, spelled out in full and complete detail as to infiltration of Communists into Government, the growth and conspiratorial character of Communists and their organizations, citing names, times, and places, would be very valuable to the courts when they are called upon to pass on the cases brought under the laws which you enact. No doubt should be left of the serious view which the Congress takes of the clear and present threat of this movement, not in some distant future, but here and now. If this is fully explained as the legislation moves through the House and Senate, the courts may be expected to recognize the constitutional soundness of your legislative efforts.

For this reason, we urge most strongly that every effort be made to get into the record of the procedure upon the floor of the House and the Senate clear and incontrovertible evidence of the nature and character of the Communist movement.

(Representative Moulder leaves hearing room.)

Dr. SCHMIDT (continuing). I have already discussed the importance of exposure and educational work, and commended your committee on the research studies and educational materials which have been released. We must have a steady flow of these materials, both from the Government and private groups.

There is still a disposition among a great many people to assert and argue rather blandly that if we solve our domestic economic problems and remove this or that type of discrimination, "it can never happen here." Certainly we should do all we can in this direction, but to assume that the growth of communism is primarily traceable to poverty and economic dislocation, is sheer nonsense. Yet, this nonsense is repeated again and again by nationally syndicated columnists and many others. Even a casual acquaintance with the leadership of the Communists and Communist-front movement indicates that the most active and aggressive leaders are not poverty-stricken Okies, needleworkers, or unemployed miners, or underprivileged members of minority groups, however much these leaders may exploit alleged or actual sufferings and hardships of individuals for whom they claim to speak.

In a world of change, with religion, beliefs, faith, and tradition undermined and corroded, man seeks new anchors. The combination of the utopian economic promises of communism and the busy work provided for all the comrades, whether youth, adolescent, or adult, has a powerful appeal to the wellspring of human need. The Communists are experts in psychological warfare.

While no nation under a democracy and free elections has ever voted a Communist Party into power, militant small minorities can readily pave the way for a coup d'état. For this reason, we need all the exposure of the true nature of the Communist policy and programs in action in the Soviet Union and its satellites as well as exposure here in our own midst.

In this connection, we cannot refrain from sounding a warning on the danger that the so-called democratic socialism may be a mere prelude to communism. More and more people are saying, "Let's adopt the middle way, let's adopt some socialization and thereby undermine the drive toward the 'total state' of communism." We believe this is seriously misguided and dangerous thinking.

In its anti-Communist publications, the Chamber of Commerce of the United States has repeatedly warned against confusing Socialists and Communists. This warning still stands. There is, however, much evidence that the socialization of industry is a mere prelude to communism. A recent case in point is that of Czechoslovakia, which is described in the Strategy and Tactics of World Communism, a 27-page report issued by the Committee on Foreign Affairs of the House of Representatives.

While the coup d'état which "peacefully" converted Czechoslovakia from "socialistic democracy" to communistic dictatorship did not occur until 1948, the record shows that the ground work had been laid as early as 1945, when arrangements were made, under pressure from Socialists and Communists, for the nationalization of a number of industries. President Benes signed the necessary decrees.

Meantime, Communists found it easy to infiltrate the Czech Parliament and the various Government ministries. When the time was

ripe for the coup, it was carried off with ease, against only passive resistance on the part of the Socialists.

Czechoslovakia is not alone in its tragic history. Experience in many other European nations indicates that so-called democratic socialism is a contradiction in terms. It is the entering wedge for hard communism.

Socialists generally are devoted to liberty and democratic processes but wherever they have to wrestle with strong minorities of Communists, the Communists tend to win out. The Socialists, who are mild-mannered and slow moving, with a devotion to parliamentary procedure, are no match for Communists, who are ruthless, conspiratorial, and fast on their feet.

On the economic front, moreover, there is no difference between socialism and communism, and there never has been—at least in practice. Both are against private ownership, favoring government operation of all productive enterprises. So, while it is always dangerous to confuse Communists and Socialists, it is important to recognize that on the economic front they are essentially identical.

Since socialism is basically the same as communism on the economic front, and since socialism has shown itself in so many countries to be a preliminary symptom leading to communism, is not the wisest procedure to avoid socialism like the plague? Perhaps there is no inherent reason why socialism is a prelude to communism, but there are enough cases where this has been the historic alinement to make all thoughtful people cautious in endorsing further governmental participation in enterprise.

An illustration of the sequence of events in our own country may be found in the Department of Agriculture, which with its various agricultural programs during the 1930's moved with more momentum in the direction of socialism than was true of any other phase of the New Deal. A careful examination of the Government reports on communism shows that more Communists and people accused of Communist leanings had a berth in the Department of Agriculture than in any other Government department.

Recent reports from Berlin indicate that while we are struggling to prevent the spread of communism in Europe, we are dealing with a socialistic city government which polled 66 percent of the vote in the last election.

The world-wide pattern which has developed should be obvious to anyone who takes the trouble to study it. If we are wise, we will treat socialism as a prelude to communism; and we will limit government to rule-making, without letting it enter directly into business.

Mr. TAVENNER. That is all.

Mr. WOOD. Mr. Walter.

Mr. WALTER. At the bottom of page 8 of your statement this is contained:

> A careful examination of the Government reports on communism shows that more Communists and people accused of Communist leanings had a berth in the Department of Agriculture than in any other Government department.

What Communists were employed in the Department of Agriculture?

Dr. SCHMIDT. I didn't bring the list with me, but your own hearings, before this committee, will indicate that a good many people who

appeared as witnesses in the last 3 or 4 years were in the Department of Agriculture and they refused to identify themselves on grounds of self-incrimination. I could bring you a list of those.

Mr. WALTER. Are those people who are Communists, or who have been charged to be Communists?

Dr. SCHMIDT. A good many of them have been recognized as Communists; they write for Communist papers regularly, they are applauded in the Daily Worker, and while it is always hard to prove they are Communists unless you see their cards, a good many people have labeled them Communists; but proof is very, very difficult.

Mr. WALTER. Proof is difficult and accusations, of course, are made very easily.

Dr. SCHMIDT. And perhaps too readily. That is why I hesitate to rely on memory to answer your question more directly.

Mr. WALTER. That is all.

Mr. WOOD. Mr. Harrison.

Mr. HARRISON. I think not.

Mr. WOOD. Mr. McSweeney.

Mr. MCSWEENEY. Mr. Schmidt, I happen to be an old political economy teacher.

Dr. SCHMIDT. Good.

Mr. MCSWEENEY. And I tried to teach the Marxian theory and so on. Don't you think from your statement we are apt to confuse socialism with what we call social legislation? If we are to take the position that everything we do for the benefit of the people is a drift toward socialism, aren't we going to stifle doing anything for the benefit of the people? Why is it more of a drift toward socialism to do something for a big group of people than it is to enact special legislation for a small group of people?

Dr. SCHMIDT. I don't think the issue ought to turn on whether it is done for any special group or a large group or small group. It ought to be, first of all, within the Constitution, and it ought to be within the power of Congress to act, then if it does promote one or more of the powers that Congress has, well and good. The welfare clause of the preamble does not give Congress any power.

Mr. MCSWEENEY. But remember the AAA was declared unconstitutional under the welfare clause. I know of no legisaltion that reached more people than the AAA did, yet it was declared unconstitutional under the welfare clause.

Dr. SCHMIDT. The founding fathers were very much concerned over the growth of tyranny and powerful and strong government, and Congress has only 17 powers or groups of powers, and the judiciary did not see how that legislation could conform with any of those specifically enumerated powers, and I think it is excellent to have that kind of resistance. I think every new idea should prove itself in the market of public opinion. Simply because somebody tells us something is good for humanity, it is not necessarily true. We should study it and see if it is.

Mr. MCSWEENEY. And we have to be careful who studies it.

Dr. SCHMIDT. I think all groups should study it; all private as well as Government groups should study it.

Mr. MCSWEENEY. I happen to be a Jeffersonian Democrat and have learned that the encroachment of the Court on the legislative body

would be the downfall of democracy. The Congress decided we needed the AAA and the Court decided against it.

You made a statement here that might cause legislators who are very liberal minded to worry about certain legislation that they feel is a drift toward socialism, while it is still in the purview of beneficial legislation to the masses.

Dr. SCHMIDT. We just published a pamphlet, Socialism in America, in which we develop tests to answer that question you have in mind, to determine whether certain legislation does destroy our basic concepts. We think a great many types of programs are on the right track and they do not necessarily destroy or undermine individual responsibility and individual initiative and self-reliance, but we think history demonstrates that once government assumes responsibility for the individual, you weaken government and you weaken the people, and with the kind of international insecurity we have, we can't afford to have an industrial economy that is weak. We want the strongest possible economy, and we think the Russian system or anything approaching the Russian system is relatively weak compared to our system.

Mr. MCSWEENEY. But you don't think legislation to protect people's bank deposits, and legislation to protect people against acts of God, are a drift toward socialism?

Dr. SCHMIDT. No. If they deal with emergency situations I think they are on the right track.

Mr. MCSWEENEY. The first enactment of a tariff law gave protection to one group at the expense of another group. It took care of a manufacturing group, and the trusts and all legislation that followed have been a reaction against that tariff. I am worried about your statement and feel I must refute it as a Democrat, because I don't want it felt by my people I am drifting toward socialism. I have a definite distinction between Marxism, socialism, and social welfare, and in your written statement you have led me to believe that the chamber believes there is a drift toward socialism.

Dr. SCHMIDT. I think there is. The more Government does, presumably the less the individual does. You will remember, as a teacher of political economy, you had anarchism on one side and communism on the other, and various "isms" in between. Our historical pattern is a constitutional laissez-faire or constitutional anarchism; and the more you control individuals and take the risks out of life for the individual, the more you are moving in the direction of socialism. Somewhere, I am sure, you would want a stopping point. You and I might disagree on where the right stopping point is, but on most I think we would agree as being in the national interest and in conformity with our historical pattern in the light of modern technology.

Mr. MCSWEENEY. Do you not, though, feel that the first enactment of a tariff law—I am going back because it destroyed the individuality of the producer, it gave him protection—was it not a destruction of the initiative, the capability, and the producing power of what we call the manufacturing people of America, and was it not a protection to the producer at the expense of American buyers?

I am quoting a very fine American, William R. Green, a former Representative from the State of Iowa with whom I served in Congress, who was chairman of the House Ways and Means Committee. He showed that a farmer who bought his product on the Chicago mar-

ket could buy a McCormick harvester in Germany and ship it back to New York cheaper than he could buy it on the Chicago market in 1923 and 1924. Why is it more socialistic to protect that farmer than to protect the producer?

Dr. SCHMIDT. The tariff, in the initial stages, constitutes a subsidy to the owner of the assets, but as soon as competition develops within the tariff wall, there is no longer any subsidy. What the tariff does is change the structure of your economy, and it does cost whoever buys that product more than he would perhaps—I say, perhaps—be able to buy it from a foreign country. But in the long run it is not a subsidy to an investor, because, if it were, you and I could become millionaires by investing in those products.

Mr. MCSWEENEY. And after the development of the trusts, why did we have to have the Sherman antitrust law when in reality all we would have needed to do was to grant the President power by Executive order to say, "We will reduce the tariff and let foreign competition take care of it." We didn't need the Sherman antitrust law.

Dr. SCHMIDT. I think you are on sound ground there. I think the tariff will make it easier for businessmen to club together and create a monopoly. If there were no tariff they would also have to control foreign producers.

Mr. MCSWEENEY. I am sorry to take up so much time, but I want you to tell me the difference between doing something for monopolies, the little groups that benefit particularly under a tariff, and what you call the New Deal—and I can take every bit of the New Deal and back it up with Jeffersonian philosophy—tell me the difference between giving benefits to little groups or cliques—and I am not against big business—and what you call the New Deal giving benefits to other segments of the people.

Dr. SCHMIDT. If you look at the tariff, I don't think you will find it is designed to benefit a little clique. It was designed to disentangle ourselves from troubled and trouble-making Europe. Our founding fathers wanted no ties with Europe. They wanted our whole lives and our whole economy to be free from foreign entanglements, and one way was to prevent our economy from being a raw economy exclusively, and the smartest and quickest way to diversify an economy is to build up a tariff wall. That was designed to separate this continent from the troubled European Continent; and to be sure the fellow who happened to make harnesses and farm equipment was in a position to profit.

The second idea was to help create a domestic market for our raw materials, especially our agricultural raw materials.

So the tariff was not designed for a small group. They probably promoted it, but as soon as competition develops within the tariff walls, then there is no longer any subsidy.

People say the railroads got great subsidies. But we were not taxing any citizens and handing it over to somebody else. We were taking this public domain, for which there was no demand, and handing it over as land grants to the railroads to make it worth their while to build these great streaks of iron across the continent.

So there is quite a diffeernce between programs designed to build up an economy and programs to help individual groups.

Mr. MCSWEENEY. I can't divest myself of the feeling that the granting of a tract of land a mile wide across this continent was a

greater inducement than needed by the railroads, and made them very important controllers of the American program for the next 40 years.

Dr. SCHMIDT. I don't think we can deny that.

Mr. MCSWEENEY. I apologize for taking up so much time, but you still haven't differentiated to my humble mind between taking care of one segment of society by the tariff program, and protecting the little man, surrounding him with, let us call it a wall, not a tariff wall but a wall wherein the group of big men cannot reach out and absorb and destroy him. I don't want to take up any more of your time, but I don't think you have explained to me the difference between legislation for the benefit of the big man and legislation for the little fellow. Why is one more socialistic than the other?

Dr. SCHMIDT. I don't think it is.

Mr. MCSWEENEY. We have had the tariff program for the past 60 years, and the big men have been the ones who have profited. We who believe in social legislation—call it the New Deal if you please—the group who profited by the other type of legislation says we are drifting toward socialism.

Dr. SCHMIDT. Certainly the Sherman antitrust law was designed for the little fellow as well as any other person or group.

Mr. MCSWEENEY. It was such unnecessary legislation, both the Sherman antitrust law and the Clayton Act. If the President had been given power by Executive order to reduce the tariff on commodities restricted in trade, foreign competition would have taken care of it.

Dr. SCHMIDT. It has been suggested that both methods be used, the Sherman antitrust law as well as the tariff.

Mr. MCSWEENEY. I am sorry to have started such an argument, and I want to say I am not against big business per se, but I don't want to be branded as belonging to a party that is drifting toward socialism because we feel the Government has obligations to protect groups that cannot withstand the economic stress of the times.

Mr. WALTER. I am afraid our friend is too sensitive to partisan arguments advanced every 2 years.

Mr. HARRISON. The question my colleague asked about the interference of Federal courts with the legislative processes, they didn't stop interference with the legislative processes in the middle thirties, did they?

Dr. SCHMIDT. They delayed it.

Mr. HARRISON. You misunderstood my question. The action of the court in interfering with the legislative processes still goes on, does it not, in the present court?

Dr. SCHMIDT. You mean the courts still interfere?

Mr. HARRISON. Yes.

Dr. SCHMIDT. Well, there haven't been many laws declared unconstitutional.

Mr. HARRISON. What about the Lovett decision?

Dr. SCHMIDT. There have been several cases involving civil liberties, the Schneiderman case and others.

Mr. HARRISON. What about the attitude of the court on evidence obtained by recording?

Dr. SCHMIDT. Wire tapping and so on? If the law is knocked out, let's see if we can redraft the law so it won't be unconstitutional. I

don't think we should condemn the court or the legislature for that.

This bill that is before you now is to some extent a deviation from our traditions, we don't like to do that, but considering the gravity of the Communist problem, we have to give these organizations a semilegal status.

(Representative McSweeney leaves hearing room.)

Mr. WALTER. I would like to point out, John W. Davis has written an opinion respecting H. R. 7595 in which he states in his opinion the bill is constitutional. William Schnader, former attorney general of my State, was chairman of the committee selected by the American Bar Association to examine this bill, and he wrote a very lengthy opinion in which he states he considers it constitutional.

Dr. SCHMIDT. I think a majority of the constitutional lawyers are inclined to believe, because it is so carefully drawn—it protects the individual and does not publish his name until he has had opportunity to refute the charge—that because of those safeguards it is constitutional. I think you ought to lean over backward to protect the individual so that he is not mislabeled.

Mr. HARRISON. There is some duty to protect the country, too.

Dr. SCHMIDT. That is right.

Mr. WOOD. Mr. Velde.

Mr. VELDE. I agree with what you said in the latter part of your statement, with regard to socialism, but I think we are going far afield in arguing that in connection with the bill before us.

In the matter of H. R. 7595, on page 5 of your statement you raise the question—

> whether it would be practical to make the act apply to Fascists and Nazis or any other agents of any other foreign power engaged in activities closely similar to those described in section 2 of H. R. 7595—

then you say:

> Whether this is a practical idea or not we will leave for your consideration.

I am wondering if you have an opinion as to whether or not it would be a good idea?

Mr. HARRISON. Where are you reading from?

Mr. VELDE. Page 5, same paragraph.

Mr. TAVENNER. Relating to section 2 of H. R. 7595.

Dr. SCHMIDT. We are inclined to feel it would be a protection in this so-called psychological warfare. We don't feel there are any serious Nazi organizations attempting to overthrow the Government at the moment, but if you will read Communist literature you will find they label almost anything they don't like as Nazi or Fascist; so if you could make this bill apply equally to all subversive agents of foreign countries it would undermine that. If you could weave the phraseology in, perhaps in the preamble to the first section, and have a clause saying you are just as much against Fascists and Nazis who are agents of a foreign power, I think it would be a good thing to put in.

Mr. VELDE. I havn't given this particular point much study, but it seems to me it might be a wise idea to include other subversive organizations, although at the present time I think we all realize our danger is not from those groups.

Dr. SCHMIDT. That is right.

Mr. VELDE. Mr. Harrison brought up the question regarding wiretapping evidence. I believe a bill was introduced at the last session

providing for the admissibility of evidence secured by wire-tapping in cases affecting internal security.

Mr. WALTER. That is pending in the Judiciary Committee now.

Mr. VELDE. I wondered if you would care to express an opinion on that bill?

Dr. SCHMIDT. I don't think the Chamber has ever really studied that phase of it. It is a pretty technical thing, and I don't think we would care to express an opinion on it.

Mr. VELDE. That is all.

Mr. WOOD. The committee is very appreciative of your appearance here. Probably all of us have not had an opportunity to interrogate you as we would like, but because Congress is now in session we will have to suspend. In the event any of us desire to further interrogate you, I assume you would be available?

Dr. SCHMIDT. Yes.

Mr. WOOD. Until such time as you may be recalled, you are excused, with our thanks and appreciation.

The committee will stand in recess until 10:30 tomorrow morning.

(Thereupon, an adjournment was taken until Wednesday, March 22, 1950, at 10:30 a. m.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

WEDNESDAY, MARCH 22, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The committee met, pursuant to adjournment, at 10:30 a. m. in room 226, Old House Office Building, Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood, Francis E. Walter, Burr P. Harrison, John McSweeney (arriving as noted), Morgan M. Moulder, Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; John W. Carrington, clerk; William Jackson Jones, investigator; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order. Let the record disclose that a quorum is present, consisting of Messrs. Walter, Harrison, Moulder, Velde, Kearney, and Wood.

Mr. TAVENNER. In continuing the legislative hearing on H. R. 7595 and H. R. 3903, we have this morning, Mr. Chairman, Mr. Omar B. Ketchum, director, national legislative service, Veterans of Foreign Wars. I believe he is here.

Mr. KETCHUM. That is right.

Mr. WOOD. Will you stand and be sworn. You solemnly swear the evidence you give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KETCHUM. I do.

Mr. WOOD. Have a seat, sir.

TESTIMONY OF OMAR B. KETCHUM

Mr. TAVENNER. Will you please state your full name, Mr. Ketchum?

Mr. KETCHUM. My name is Omar B. Ketchum, director, national legislative service, Veterans of Foreign Wars of the United States.

Mr. TAVENNER. In accordance with procedure adopted by the Senate and also by the House committees in taking testimony on matters of this kind, we ask each witness this question: Are you now or have you ever been a member of the Communist Party?

Mr. KETCHUM. I will be glad to answer that question. I am not, never have been, and never intend to be a member of the Communist Party.

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Mr. TAVENNER. I believe you have a prepared statement?

Mr. KETCHUM. That is correct.

Mr. TAVENNER. Do you desire to read it?

Mr. KETCHUM. I should like to read it, and then if there are any questions I have some extemporaneous remarks pertinent to certain phases of our presentation.

Mr. TAVENNER. That is fine. Will you proceed to read it, please.

Mr. KETCHUM. Mr. Chairman and members of the committee, I am grateful for this opportunity to present the views of the Veterans of Foreign Wars of the United States with respect to pending legislation designed to curb the spread of and to defeat the machinations of the Communist Party in the United States.

(Representative McSweeney enters hearing room.)

Mr. KETCHUM (continuing). For many years the Veterans of Foreign Wars has concerned itself with the danger to our democratic institutions and our way of life by the constant and continual pressure of the international Communist movement in this country. The Americanism and National Security Committees of our National Conventions for years past have labored over the problem of how to properly defend ourselves from the inroads of this insidious movement and still retain, strong as ever, those fundamental concepts of our Bill of Rights.

The problem is a continuing one and we know that this Committee on Un-American Activities has devoted tireless effort to bring about an American solution. We are also aware that this committee for many years has dedicated itself to the task of ridding our social and political structure from the menace of anti-American ideologies; and we have come to look to this committee as the instrument through which our people may express their need for an effective defense against the spread of communism in the United States.

The fiftieth national convention of the VFW in August 1949 adopted a resolution, by unanimous vote of the delegates present, to outlaw the Communist Party in the United States and to provide appropriate penalty for those who adhere to its principles.

The current resolution reads as follows:

[Resolution No. 67. To outlaw the Communist Party]

Whereas communism is and continues to be a major scourge and menacing threat to all that we hold dear as liberty loving people; and

Whereas the motives and objectives of communism is to get control of the world and to destroy the capitalist system and the governments that operate under it through the promotion of internal disorder and strife; and

Whereas during the past decade particularly, communism has made sweeping inroads toward the accomplishment of its objective throughout the entire world, including the United States of America, by securing and procuring for its agents positions of trust and responsibility, in both our State and Federal Governments; and

Whereas millions of American dollars have been spent by the FBI, the Army and Navy Intelligence, and other executive agencies to detect and keep under surveillance Communists, since the party was organized in this country a generation ago; and

Whereas the best method to combat communism is by detection, exposure, and prosecution; and

Whereas the United States Government, by and through its various agencies, has successfully detected and exposed innumerable Communists actually engaged in acts of treason against the United States Government; and

Whereas it is axiomatic that any constitution of a free people must possess the inherent power to protect and defend that constitution: Now, therefore, be it

Resolved by the Fiftieth National Encampment, Veterans of Foreign Wars of the United States, That the President and the Congress be petitioned to enact legislation outlawing the Communist Party in the United States, and be it further

Resolved, That, should it be necessary, every effort be made to amend the Constitution so as to authorize the Congress to outlaw any organization which advocates overthrow of the Government by force and violence.

Approved by the Fiftieth National Encampment, Veterans of Foreign Wars of the United States, Miami, Fla., August 21-26, 1949.

Mr. WOOD. Did I understand you to say that resolution was adopted by unanimous vote?

Mr. KETCHUM. Yes. Approximately 6,500 delegates attended the convention, and there was no objection from the floor to the resolution.

(Representative Walter leaves hearing room.)

Mr. KETCHUM. We are aware of the objections that have been spread over the hearing records of this committee contending that there is a constitutional impediment to the outlawing of the Communist Party, and that outlawing the party would drive it underground, thereby retarding our efforts to detect and expose its operations.

The Communist Party in the United States represents a conspiracy dedicated to the overthrow, by force and violence, of the Government of the United States. The Supreme Court has never made such a determination because the question has never been properly before that Court. However, some lower Federal courts have made such a determination and there is, therefore, sufficient basis to rebut the contention that the outlawing of such a conspiracy would be unconstitutional.

We also insist this committee and the Congress ought not to be influenced by what a future Supreme Court might rule on some future issue involving a law that would definitely point to the elimination of the Communist Party in the United States. The enactment of such a law would once and for all sharply define the most important issue facing us today, an issue which, unless solved, bears the indelible imprint of our decline and fall as a great nation.

We contend that the Communist Party represents a criminal conspiracy to overthrow our form of government. The lawyer's rejoinder is that an overt act is an essential element of a conspiracy. However, an overt act may be committed by a word, by the teaching and spreading of a criminal doctrine, by a joining of hands in a common effort to propagate a doctrine of terror. Surely, that fits the pattern of operation of the Communist Party.

It has been contended that the Congress is outlawing the Communist Party would be making a "finding of fact" that membership in the party was membership in a criminal conspiracy. Our only answer is that it's about time. Eastern Europe and China have learned the bitter lesson of trying to rationalize their acquiescence of communism as the mere acceptance of agrarian or social reform. By making such a congressional finding of fact our law-enforcement agencies would have a much more effective weapon in eliminating disloyal and subversive elements because then membership in the Communist Party would be penalized.

Don't get mired down in a bog of rationalization when the picture of what communism means for the United States is as clear as day. In your groping for a solution to the Communist menace, don't lower your sight and thereby fall into the trap cleverly advanced by the Marxist dialectic that communism is a political science, something that may be registered but not in the jailhouse.

Many of the so-called liberals in our midst have decried the suggestion of outlawing communism, warning that we would make martyrs of Communists, that, by some strange twist of reasoning, they, underground, would become the inheritors of the Jeffersonian tradition, and that the rest of us, in Gestapo-like fashion, would preside over the liquidation of the Bill of Rights.

Let's call a spade a spade and outlaw the Communist Party, rid the party of the semblance of legality by means of which they obtain monetary and spiritual support through front organizations. You won't be driving them underground, because the most serious part of the Communist movement is already underground.

The Communist menace presents a challenge to our country, and how we meet that challenge in the next 5 years will depend the survival of western civilization. We can take a firm stand now athwart the path of communism by outlawing it, or we can play along with it until it has sapped our strength and weakened our defenses.

Mr. Wood. I am sorry to interrupt you, but one of the members has to leave and he desires to make a statement.

Mr. McSweeney. I have to be on the floor the minute the House convenes, and as a life member of the Veterans of the Foreign Wars in both wars, I want to commend you for your action and tell you how glad we are to have you before our committee.

Mr. Ketchum. Thank you, sir. I appreciate that very much and am sorry you have to leave.

Mr. Wood. I am sorry I had to interrupt you.

Mr. Ketchum. That is all right, Mr. Chairman. I understand those things.

(Representative McSweeney leaves hearing room.)

Mr. Ketchum. We will then discover, too late, that the Constitution of a free people necessarily bears the inherent power to defend itself. Surely, the Constitution is not so weak an instrument that it could be used as a vehicle of self-destruction.

We urge you to take this forward step, to send to the House a bill that would outlaw the Communist Party in the United States.

A brief word about the bill H. R. 7595, presently pending before this committee. This bill, patterned after the so-called Mundt-Nixon bill of the Eightieth Congress, defines certain prohibited acts which affect the security of the United States. The bill also requires the registration with the Attorney General of persons belonging to the Communist Party or Communist-front organizations, and also requires the registration of such organizations. Penalties are provided for failure to register and findings of fact, as to whether an individual or organization must register, are to be determined by a Subversive Activities Control Board. Judicial review of the actions of the Board may be provided before the United States Court of Appeals for the District of Columbia and the United States Supreme Court.

Although the Veterans of Foreign Wars of the United States stands by its convention mandate that the Communist Party and any other

party or organization which advocates the overthrow of the Government by force and violence should be outlawed, we do recognize the legislative practicality of moving toward our announced objective in phases. The first phase might well be the approval of legislation such as H. R. 7595. Surely, it will announce to the world and the Communist Party that this democratic nation of free people can be pushed just so far.

In conclusion, I would like to reiterate that our organization has given this subject considerable study for several years past, and we are convinced of the tenability of our position that the Communist Party should and ought to be outlawed. We are even more convinced, admitting that that is a possibility, that the bill H. R. 7595 is well-fortified with protective safeguards enough to satisfy the most zealous champion of the literal interpretation of the Bill of Rights.

If you will not accept our advocacy of unqualified outlawing of the Communist Party, then we strongly urge that you take the next and only remaining step, the approval of the subversive activities control bill, H. R. 7595.

Mr. Chairman, that completes my prepared statement. I don't profess to be an expert or an authority on this subject, but I am willing to answer any questions concerning matters which we are advocating and which are presented in this paper.

Mr. Wood. Mr. Harrison.

Mr. Harrison. I have no questions to ask. I would like to make the observation that I think the Veterans of Foreign Wars and the American Legion are to be commended for the splendid work they have done in exposing and bringing to the American people the menace of communism. If more of our organizations such as the Veterans of Foreign Wars and the American Legion did that, there would not be so much complacency in this country about the great peril that confronts our Nation, and I hope you keep it up.

Mr. Ketchum. There have been two primary problems which our organization and the American Legion have been concerned with for a long time. One has been communism, subversive activities, and the other has been national security, and I want to agree with what you say, that if the American people had given more attention to some of the things we have advocated over a long period of years, I am sure we might be in a different position today.

Mr. Harrison. I am certain of it.

Mr. Wood. Mr. Moulder.

Mr. Moulder. I have no questions but would like to make an observation similar to that made by Mr. Harrison. I feel the Veterans of Foreign Wars and the American Legion have fought valiantly to preserve our American way of life, and I want to commend Mr. Ketchum for his excellent statement.

Mr. Wood. Mr. Velde.

Mr. Velde. As I mentioned yesterday, I think it might be well to include, along with outlawing the Communist Party, outlawing other subversive organizations such as Nazis and other organizations which have been cited as disloyal. I wondered if you had an opinion on that?

Mr. Ketchum. I think I touched on that in my statement. I stated the Veterans of Foreign Wars stands by its convention mandate that the Communist Party and any other party or organization which ad-

vocates the overthrow of the Government by force and violence should be outlawed. There are many who oppose the theory of trying to outlaw the Communist Party on the ground there is a question of constitutionality involved, and on the ground it might drive the Communist Party underground and make it more difficult to deal with them. Our answer is that no one can say such a law is unconstitutional until it had been interpreted by the Supreme Court of the United States. When they contend it will drive the Communists underground and make it more difficult to deal with the problem, we come back and say the real effective Communist Party is already underground, that they are using a legal and above-ground apparatus as a front to attract the funds with which the underground operates. If we drive them underground, leaving their head sticking above ground, we will have something effective to deal with.

Mr. VELDE. I think you are right in saying the real effective part of the Communist Party has been operating underground for a considerable period of time, but I want to bring up this point again: It might appear, if we pass this bill as it now stands, we are singling out one particular group of subversives, which might, as far as the American people are concerned, react unfavorably.

Mr. KETCHUM. If I am not mistaken, I think a witness yesterday morning touched on that, and I am inclined to go along with him that if the bill is directed only against the Communists, other groups may contend this committee or the Congress is against Communists, but it not so keen against Fascists.

Our big problem, that we recognize today, has been communism. Whether there is any substantial movement of nazism in this country, it is not as apparent as the Communist movement. I would say, so far as our organization is concerned, we abhor everything, irrespective of the tag on it, which has for its objective the destruction of the American way of life, whether it be communism or any other "ism," but we feel communism is the present threat, and that is why we have been directing our particular attention to it.

Mr. VELDE. It was also brought out yesterday—I don't know if you attended the hearing yesterday?

Mr. KETCHUM. No; I was not here.

Mr. VELDE. It was brought out by Mr. McSweeney or Mr. Harrison that possibly it might be wise to either attach an amendment to this bill or pass a separate bill providing that evidence secured by wire tapping be admissible into evidence. I wonder if you have any comments to make on that?

Mr. KETCHUM. I do know that such a subject has been discussed at the top level of our organization, and I know that at the last meeting of our National Council of Administration, which is the governing body between national conventions, there was a resolution presented by our commander in chief to approve wire tapping as long as that wire tapping was supervised under judicial control. I presume by that, if an investigative agency wanted to employ wire tapping, they would present their request to a competent court for decision, and only in espionage cases.

Mr. VELDE. Or in other cases affecting the security of the country.

Mr. KETCHUM. Affecting the security of the country, that is right. They discussed that matter at length, and as I understand they tabled the resolution.

Mr. Wood. For the information of members and staff of the committee and the witness, such a bill is pending before the Judiciary Committee at this moment, introduced by a member of this committee, Mr. Walter. It was introduced on March 15 of last year, and it is H. R. 3563.

Mr. Velde. But no hearings have been held on it?

Mr. Wood. Up to the moment; no.

Mr. Ketchum. I think one of the reasons why our National Council tabled the resolution was because no such legislation was pending before the Congress and there was some doubt expressed as to whether we wanted to initiate such legislation. If it is pending, and provided it is limited to controlled and supervised wire tapping in espionage cases only, I assume our council might approve that. I am only assuming, without an official poll of the council.

Mr. Velde. That is all I have.

Mr. Wood. Mr. Kearney.

Mr. Kearney. I want to thank Mr. Ketchum for the very clear and concise statement read into the record this morning. I had in mind the same thing Mr. Velde did, that it doesn't make any difference whether it is the Communist Party or any other subversive organization, legislation should be enacted to prevent the activities of either communism or fascism within the country. What I have in mind, we are spending between 13 and 15 billion dollars a year for national defense, and unless we have corrective legislation to control subversive activities, it seems to me the $13 or 15 billion dollars is somewhat of a waste of money, because while we are on the one hand providing for our defense militarily, the internal security of the country is being left untouched and—not unnoticed, it is noticed, but nothing is done about it.

Mr. Ketchum. You might use as an example, Mr. Kearney, that while we are treating the leaves and the limbs of a tree, it is rotting internally and we are not getting at the roots of the problem. We are spending bililons of dollars on the surface to protect ourselves from forces from without, but doing very little to protect ourselves from the forces boring from within, and we know if we do not have a sound foundation and a sound economy internally, the external security forces mean nothing to the Nation.

I might say to the committee, in the event you do not already know it, Mr. Kearney is a very distinguished past commander in chief of our organization, and I know of his intense interest in this subject. One of the briefest resolutions ever adopted by our organization was sponsored by Mr. Kearney, and that was that we go on record as "opposing any 'ism' except Americanism." We considered that an outstanding resolution, because it was so all-embracing and lacking in the usual whereas clauses and descriptive matter in resolutions. In other words, we are against all ideologies and "isms" except "Americanism."

Mr. Kearney. I was very glad to hear your comments on the thoughts of other organizations that such legislation might drive the Communist Party underground. According to testimony before this committee, today there are no card-carrying members of the party; they are all underground. The thing this committee and the Congress has to do is to proceed in a legal manner.

Mr. Ketchum. You have certainly put your finger on one thing, and that is the question of whether you can identify card-carrying Com-

munists. I might give you the benefit of my personal experience several years ago when I was the chief law enforcement officer of a large midwestern city. It was during the depression, when we were having trouble with unemployed groups, and we were straining to provide some work to keep people from getting into a revolutionary frame of mind. I knew there were some Communist Party members in that community, even in the so-called bible district. I could not prove they were card-carrying members, but I knew they were members from what they were doing in trying to provoke a clash between the unemployed and the law enforcement officers of the community, and it was only by day and night work that we were able to prevent such a clash between citizens and the law enforcement officers. Sometimes we instinctively know, although we are unable to prove it to the satisfaction of a court. I was convinced in my own mind at least two were card-carrying Communists, but there was no way I could get proof of it.

Mr. VELDE. Along that line, do you think it is possible, if we pass this legislation, that the Communist Party will change its name and thus be inaccessible to the law by becoming some other type of subversive organization?

Mr. KETCHUM. Mr. Velde, there is always that possibility, but if the legislation is carefully worded I think that can be overcome. I think you understand the Communist Party of the United States is actually but a part of the international movement, and their headquarters are in Soviet Russia. It would be difficult for them to carry on under some other label or tag, because by so doing they would cut themselves off from the parent tree.

Mr. MOULDER. I think H. R. 7595 covers that point in the definition of the term "Communist organization" an page 7, and to that might be added "any organization that might advocate the principles of the Communist Party."

Mr. KEARNEY. I think it should be made clear in the provisions of the bill that not only does it apply to the Communist Party, but to any Nazi or other subversive organization.

Mr. KETCHUM. We have prepared from time to time answers to questions which have been posed against our proposal, and this very question is here:

> Can we legally outlaw the Communist Party without violating the constitutional liberties of other minority groups as well, and what if a change of name occurs?

We say:

> It is important, therefore, that any statute which in effect would outlaw the Communist Party must designate with the utmost clarity just whom the statute is directed against. It would do little good merely to refer to the "Communist Party" since the day after enactment the Communist Party could change its name as it has often been changed in the past. An adequate statute would have to define the official Communist movement historically in order to show that what is in issue is the United States section of the world-wide political movement that was initiated through the Communist International. Actually, we propose to outlaw the conspiracy, the plans they are making, and "the long historical basis of what the Communist have been doing."

Mr. WOOD. I will say, for the benefit of members of the committee, that when the hearing is completed the committee will go in executive session and consider the matter for the purpose of making any amendment it feels is essential.

I wonder if your legislative group has given any consideration at all to H. R. 3903, which the committee is also currently considering?

Mr. KETCHUM. I am sorry, Mr. Chairman, but we have not, and I am not prepared this morning to discuss the bill.

Mr. WOOD. At some time during the week, if your group cares to be heard on that bill we will be glad to hear you.

Mr. KETCHUM. I will be glad to submit a supplemental statement or appear before the committee on that bill.

Mr. WOOD. Confer with me and let me know.

Permit me to express the deep appreciation of the committee for your appearance here and the statements you made, and also for the splendid work on Americanism that the organization to which you belong has dedicated itself.

The committee will stand at recess until 10:30 tomorrow morning.

(Thereupon, at 11:30 a. m. on Wednesday, March 22, 1950, a recess was taken until 10:30 a. m. Thursday, March 23, 1950.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

THURSDAY, MARCH 23, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES.
Washington, D. C.

PUBLIC HEARING

The subcommittee met, pursuant to call, at 10:30 a. m. in room 226, Old House Office Building, Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood, Francis E. Walter, Burr P. Harrison, and Harold H. Velde.

Staff members present: Frank S. Tavenner, Jr., counsel; John W. Carrington, clerk; W. Jackson Jones, investigator; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order. The record will show that Messrs. Walter, Harrison, Velde, and Wood are present.

Proceed.

Mr. TAVENNER. Mr. Chairman, we desire this morning to continue with the legislative hearings which have been going on for several days. I would like at this time to call Mr. Miles D. Kennedy, national legislative director of the American Legion, who has with him a delegation from the American Legion.

Mr. KENNEDY (MILES D.). Mr. Chairman, my name is Miles D. Kennedy. I am national legislative director of the American Legion. I do not intend to offer any testimony myself, but desire to introduce the gentlemen with me, one of whom will testify.

On behalf of our national commander, George N. Craig, I would like to thank you and your committee for the invitation you so graciously tendered him to be present and offer his testimony this morning. Due to conditions beyond Commander Craig's control he cannot be present, but the gentleman who will testify, with your permission, is James F. Green, who is chairman of the Americanism commission of the American Legion.

I would also like to introduce at this time a gentleman you all know, my predecessor, Gen. John Thomas Taylor, who is now consultant to the national legislative commission of the American Legion.

Also, I would like to introduce W. C.—we call him Tom—Sawyer, who is director of the Americanism commission of the American Legion.

At this time, without further ado, with your permission, I would like to introduce Mr. James F. Green, who, as I have said, is chairman

of the Americanism commission of the American Legion, and who would like to testify, with your consent.

Mr. Wood. Come around, Mr. Green. You solemnly swear the testimony you give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Green. I do.

Mr. Wood. Have a seat. We are glad to have you with us.

TESTIMONY OF JAMES F. GREEN

Mr. Green. I am delighted to be here.

Mr. Wood and gentlemen of the committee, I always find liaison is bad. I was going to tell you about Commander Craig being sorry he can't be here, but Miles did that.

I think I should state for the record that I am, and since October 1946 have been, continuously, chairman of the national Americanism commission of the American Legion. I am an attorney in the private practice of law in the city of Omaha, Nebr., which is my home.

I want to also express to you the gratitude of the American Legion for this opportunity to appear before your committee.

It seems to me it is not necessary, at this late date, to go into an extended discussion of the constant position of the American Legion in opposition to communism and other traitorous activities, and in support of legislation to curb and control them. I am sure the 31 years of American Legion history is the most eloquent testimony of that fact. I ask this committee to take notice of that history, which is well known to you. It has been constant and continuous since 1919 when in Centralia, Wash., four members of the American Legion met their deaths at the hands of the old IWW. For all of these 31 years our organization, which is the largest of all veterans' organizations, has warned against the insidious danger of the amoral Communist conspiracy and has pressed energetically for effective legislative controls to curb and to outlaw it and to rip from it the harlequin mask of pretended political activity.

With its millions of members in every city, town, and county in the several States, representing as they do every walk of life, every creed, and every strata of society, I believe the American Legion can be described as a truly representative organization, one which understands and is capable of reflecting the thinking of the unspoken multitudes of our population who never have an opportunity to appear before a committee such as this.

Time and time again at State and national conventions of the American Legion, resolutions have been adopted demanding adequate legislation to prevent abuse of citizenship by those who have voluntarily given their promise of loyalty to an alien power and thereby have become a menace to our national security. Of late years resolutions have been adopted specifically supporting measures of the type you are considering in principle.

Representatives of the American Legion have appeared before this committee and before the Committee on the Judiciary of the United States Senate to state the position of our organization. Specifically, I call your attention to the appearance before this committee or its predecessor of James F. O'Neil, later national commander, of John Thomas Taylor, and myself on the first day of this extended series of

hearings in February of 1947. Later, as national commander of the American Legion, in 1948, James F. O'Neil testified again. In May of that same year Paul Griffith, past national commander of the American Legion and presently Assistant to the Secretary of National Defense, testified before the Committee on the Judiciary of the Senate in support of H. R. 5852, a forerunner of the present H. R. 7595. On yet another occasion Robert J. Webb, former chairman of the national Americanism commission of the American Legion, appeared, also testifying in favor of this type of legislation in principle.

I say this because, as you well know, the exact law which you are now considering has not yet been submitted to a convention of the American Legion, which is our legislative body, so far as functioning and adopting resolutions. However, the predecessor measures, similar in principle to the type you are now considering, have been studied and approved.

Again, on May 4, 1949, I appeared before the Committee on the Judiciary of the Senate in support of S. 1194 and S. 1196, which were styled the Mundt and Ferguson bills.

All of that testimony, covering a period of 3 years, supports in principle the present legislation. If considered necessary or desirable, I request permission to have all of that testimony inserted in the record at this point. If in your judgment it is merely cumulative of other supporting testimony already contained in the record, then, of course, it need not be included.

In that testimony the other witnesses and myself carefully pointed out and argued that the Communist Party was and is the slavishly obedient, willing instrument of a foreign power; that its members and supporters were coldly scheming betrayers, bent upon a mission of liberty destruction, lured by a dream of personal power. We stated further that the Communist Party and its members are part and parcel of a foreign intelligence corps operating in the United States, always willing to obey and carry out the orders of their foreign master.

I remember in 1946, for want of a better figure of speech, I used the figure: "Here are cadres for 10 Russian divisions already on American soil." I think that is true today.

We also called attention to the fact, as did others, that lying, treachery, stealing, any methods were all right, according to the philosophy of communism, if they served to advance the Communist cause, and that Communists in government or in any position of trust in our national life were a dangerously weak link in our security.

It seemed to us then, and it seems to us now, that it is foolhardy to pour billions of dollars of our national wealth into an effort to combat communism abroad, while blithely blinding ourselves to the danger at home. Why argue for legislation to build up a courageous corps of secret sentinels abroad, only to have Judith Coplon or someone like her steal the records of their hidden identity and purpose and turn them over to Soviet Russia and her satellites. Not knowing of any such case, I cannot say that it is so, but wouldn't it weigh heavily on our national conscience to one day learn that a man serving abroad for his country was convicted abroad, not by evidence obtained abroad, but by evidence forwarded from the United States by American traitors?

Representatives of the American Legion have testified often and at length on this subject during the last 3 years. During all of that time

our own research staff has been diligently watchful and quietly and efficiently assembling further data. The danger is no less than it was 3 years ago. As our world has become smaller and the Communist-dominated world larger, it is more intense. All of us recognize that.

This committee and its counterpart in the Senate are deserving of compliment for the careful manner in which they have proceeded. Volumes of evidence have been accumulated. The weight and sufficiency of this evidence have been increased by specific, eminently fair prosecutions in courts of law against persons guilty of hateful acts of betrayal which the American Legion and others warned might be expected because the only conscience of those who serve communism is in communism, and communism recognizes no conscience, for it recognizes no God.

Legislative findings based upon sufficient study and investigation will not be lightly overturned by courts. That is a fundamental rule of law. You have been careful. You have the facts. Now is the time for action. Americans have been seriously troubled by the full implications of a Soviet "fifth column" operating in our midst. They have been alarmed by the stark realization of betrayal at the hands of some native-born Americans. They want action, and I submit they want it now.

To my mind, it is unfortunate that politics have entered this field of inquiry and action. The danger we are facing is to national security and, eventually, to national sovereignty. All who have taken an oath to "uphold and defend the Constitution of the United States" should join hands in rooting red traitors from their hidden holes in our national life.

Act now. Please don't wait for court decisions which may not be handed down for many months or even years. Time is precious. While we debate, our enemies act. At first blush, the request that Congress wait upon a decision yet to be handed down by one of our circuit courts of appeals, and not yet even on its course up to the Supreme Court of the United States, seems reasonable. But that request and that line of reasoning totally fail to take into account the fact that few bills have been drafted with such scrupulous care for their constitutionality as have these; few bills have been so carefully drafted and redrafted; and that is particularly true of H. R. 7595, the Nixon bill. Outstanding attorneys in the field of constitutional law and the standing committe on the Bill of Rights of the American Bar Association, in ably reasoned opinions, have expressed belief in the constitutionality of S. 2311, a counterpart of H. R. 7595, and based upon the earlier H. R. 5852. These abundantly qualified attorneys have supported their opinions with an exhaustive study of pertinent decisions. I am sure you have already read the briefs. They are good briefs. As a lawyer and not an authority on constitutional law, having read them, in my opinion they are sound in reasoning and support the constitutional ground.

We are never able to act with certainty. All this committee or the Congress or any of us as individuals can do is act with care, governed by our consciences and immutable principles of fundamental justice. Certainly no one can complain with even an infinitesimal degree of right that you have acted in haste or in passion. I read some such statement in the paper a few days ago. Haste, when 3 years have been consumed in the study and preparation, is the haste with which a

mountain is worn away by the flutter of the tip of a bird's wing. It is haste of the type my small boy experienced in November while waiting for Santa Claus to appear on the 25th of December. Passion which would cause you to act in a fit of anger after 3 long years have elapsed would certainly be an abiding one. We have had too many of these specious and dilatory arguments. Now the people of America pray that you will act. And so does the American Legion.

Legislative measures of this type are intended to expose. They are based upon sound principle and solidly founded in substantial law. The Federal Government and the Congress have a duty, laid down by our Constitution, to protect the republican form of government to the States and to the ultimate sovereign, the people. This duty cannot be fulfilled if we are not protected against the intrigues of a foreign power carried into operation by its extended arm, the Communist Party.

The character of every act must be judged upon the circumstances under which it is done. Certainly, under existing world conditions and pressures, the acts of Communists and their party are legally criminal and morally wrong. They should be prohibited from employment in our Government; they certainly have no legal right to it. They should be prevented from stealing and betraying our classified information, and punished if they succeed. They should be denied passports. It would not be wise to give free transport to them so they can exchange information and hand over secrets. They should not be permitted to make a mockery of our mails and instrumentalities by using them as transmission belts for their propaganda. They should not be permitted to deduct from taxes funds donated to assist the process of breaking down and destroying liberty. The task to be done by this legislation too long has gone undone. That can be remedied by your thoughtful and patriotic action. We hope that you will take it.

That concludes the prepared statement which I have for you gentlemen, and I shall be glad to answer any questions.

Mr. TAVENNER. Mr. Green, it has been the practice of committees functioning on matters of this kind, both in the Senate and in the House, to ask of all witnesses the same question, which I would like to ask you: Are you now or have you ever been a member of the Communist Party?

Mr. GREEN. I have answered the question before and I would like to answer it again. I am not now and never have been and never will be a member of the Communist Party.

Mr. WOOD. Mr. Walter would like to ask Mr. Green a question.

Mr. WALTER. I have examined the opinions of William Schnader, chairman of the committee selected by the American Bar Association to examine this bill, and of John W. Davis. I am persuaded that they are very sound arguments. Don't you think that it might be advisable to wait for a circuit court decision rather than to wait for final word from the Supreme Court, because, as I see it, that decision might well set up some guideposts so that we would not enact something which might run afoul of the decisions of the courts and thereby undo all of the work that we are going to do?

Mr. GREEN. Assuming, Mr. Walter, that the circuit court acts whichever way, what have you got? You only have the decision of an intermediate court. You do not have the final judgment of the Supreme

Court of the United States. It is still subject to the processes of appeal. I think there are 10,000 volumes in my library alone showing decisions that have been reversed when they went to the United States Supreme Court. If I would adopt your line of reasoning, which I do not, I would say we should wait until we had a decision of the Supreme Court of the United States.

Mr. WALTER. When it gets to the Supreme Court there will be two views, and it is safe to say when the Supreme Court acts there will be majority and minority views. I am thinking more of writing legislation that will stand the test.

Mr. GREEN. I am thinking of that, too. If you are my client and I your lawyer, and you submit a problem to me, it may be a new problem. The only way I can advise you is to take the legal reasoning of our courts and apply it to your problem. This has been done here, but what they quote here are decisions of our Supreme Court to which our present Supreme Court is the successor by appointment. Why should we give precedence to the present Supreme Court over the past Supreme Court, which certainly had precedence in our legal jurisprudence.

Mr. WALTER. I would agree with you entirely if what we are attempting to do had been decided, but it has not.

Mr. GREEN. They take it point by point and justify it in those briefs. The briefs are by men familiar with the precepts in constitutional law. They have applied them to the reasoning here. I don't see why this committee should ask more. That is just one man's opinion, of course.

Mr. WOOD. Mr. Harrison.

Mr. HARRISON. You may recall in the Eightieth Congress the bill of Congressman Cole of Missouri was pending before the House Administration Committee, and at that time Attorney General Tom Clark objected to consideration of the bill until evidence in the case against the 12 Communists could be developed by trial, and after such evidence had been presented, then we would have more light upon which to base legislation. Now we come to a situation where the argument is made that we should wait until the circuit court opinion is handed down before we proceed to legislate on this subject. Can you anticipate any time when there will not be some decision pending?

Mr. GREEN. No.

Mr. HARRISON. And when this same argument could not be made with equal force?

Mr. GREEN. It could be extended infinitum.

Mr. HARRISON. Even if such legislation as this were struck down by a divided decision of the Court, wouldn't the enactment of it and subsequent decisions have a salutary effect on public opinion in directing the attention of the rank and file of the people to the Communist menace?

Mr. GREEN. Let us go a step further. During the early days of the depression we came here to try to work out a solution to the problem, and our approach was represented by the big Blue Eagle, which was later thrown out by the Court, but it was the forerunner to subsequent legislation which is the law of the land today.

Mr. WALTER. In the definitions on page 7, paragraph (5), of H. R. 7595, it is stated:

> The term "Communist organization" means a Communist political organization or a Communist-front organization.

Now, suppose that the circuit court would define activities which would come entirely within the purview of that. It might be desirable to change this language so that some organization called another name could not escape because it did not come directly within this definition.

Mr. GREEN. Couldn't that be done by amendment, Mr. Walter? If we wait for perfection we will wait forever. There is no such thing as perfection in life.

Mr. WOOD. If other members of the committee desire to interrogate you, could you be here at 2 o'clock this afternoon?

Mr. GREEN. Any time at your convenience, including tomorrow or the day after.

Mr. WOOD. We will adjourn until 2 o'clock.

Mr. VELDE. Do we have other witnesses on these bills?

Mr. TAVENNER. Yes. There will be another witness we can probably get here by 2 o'clock who is not present now.

Mr. VELDE. Do you have any witnesses in opposition to the bills?

Mr. TAVENNER. Yes. They will appear next week.

Mr. WOOD. If you can meet with us at 2 o'clock we will appreciate it.

Mr. GREEN. Yes, sir.

(Thereupon, at 11:30 a. m., a recess was taken until 2 p. m. of the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 2 p. m., Representatives Wood (chairman) and Velde being present.)

Mr. WOOD. You may proceed.

Mr. TAVENNER. Mr. Green.

Mr. Chairman, Mr. Green is late. He is not here at the moment.

Mr. WOOD. I imagine, since we have this quorum call, none of the other members will be here, and we will have to leave, anyway.

Mr. MILES D. KENNEDY. We have no other witnesses from the American Legion, but there is a Mr. Goldberger here from AMVETS.

Mr. WOOD. You are here in the city?

Mr. MARVIN L. GOLDBERGER. Yes, sir.

Mr. WOOD. I wonder if you could come at 10:30 in the morning?

Mr. GOLDBERGER. I may have a conflict. I have a national legislative committee meeting at that time.

Mr. WOOD. I would like for other members of the committee to be present when you testify, and it is difficult to get them here when the roll calls are coming in as rapidly as they are now.

Mr. GOLDBERGER. I will make it my business to be here at 10:30 in the morning. I will manage somehow to do it.

Mr. KENNEDY. Mr. Chairman, will you need Mr. Green back? We had planned on leaving at 6 o'clock tonight.

Mr. WOOD. That will be all right. Please convey to him, and we also express to yourself, our appreciation for your coming here and for the information you have given us.

Mr. KENNEDY. If there is any question that comes up at any time, we will be glad to give the answer to you.

Mr. WOOD. I am conscious of the splendid work the American Legion has done in this field. I have had the pleasure, on one or two occasions, of serving on the Americanism Commission of the American

Legion at the national convention. I was at San Francisco several years ago and served on the commission. I know of no organization in America that for so many years has done more in this field than has the American Legion. I think you are in better position to speak on this particular subject than perhaps any other organization.

Mr. Velde. May I join the chairman in expressing my appreciation to the American Legion, and especially to Mr. Green for appearing here before this committee and rendering such valuable service. Mr. Green is a personal friend of mine. I have had occasion to work with him on this matter, and have always found him very cooperative, and the American Legion has been very cooperative and very informative in the fight against communism and subversive activities.

Mr. Kennedy. Thank you. We will continue to cooperate with you.

Mr. Goldberger. Mr. Chairman, I wonder if I may be the first witness tomorrow?

Mr. Wood. Yes; you will be the first witness called tomorrow morning.

(Thereupon, a recess was taken until Friday, March 24, 1950, at 10:30 a. m.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

FRIDAY, MARCH 24, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARINGS

The committee met, pursuant to adjournment, at 10:30 a. m., in room 226, Old House Office Building, Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood, John McSweeney (arriving as noted), Morgan M. Moulder, Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; William Jackson Jones, investigator; John W. Carrington, clerk; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order. The record will disclose that there are present at this hearing Messrs. Moulder, Velde, Kearney, and Wood, and Mr. McSweeney is on the way, which will make a quorum.

Mr. TAVENNER. Mr. Chairman, in continuing the hearings on the legislative proposals, we have here this morning Mr. Marvin L. Goldberger, national legislative director of the American Veterans of World War II.

Mr. GOLDBERGER. Good morning, Mr. Chairman.

Mr. WOOD. Good morning, Mr. Goldberger. You will be sworn, please. You solemnly swear the testimony you will give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GOLDBERGER. I do.

Mr. WOOD. Have a seat, Mr. Goldberger.

Mr. GOLDBERGER. Thank you.

TESTIMONY OF MARVIN L. GOLDBERGER

Mr. TAVENNER. Will you state your full name, please?

Mr. GOLDBERGER. Marvin L. Goldberger.

Mr. TAVENNER. Are you a representative of the American Veterans of World War II?

Mr. GOLDBERGER. Yes, commonly known as the AMVETS.

Mr. TAVENNER. What position do you hold with that organization?

Mr. GOLDBERGER. My position is that of the national legislative director of AMVETS.

Mr. TAVENNER. Mr. Goldberger, it is the practice of this committee and also of committees of the Senate in hearings of this type to ask the question as to whether or not the witness is now or ever has been a members of the Communist Party, and I would like to ask you that question.

Mr. GOLDBERGER. I have never been a member of the Communist Party and I am not now.

Mr. TAVENNER. Do you have a prepared statement?

Mr. GOLDBERGER. Yes; I do.

Mr. TAVENNER. Would you care to read it?

Mr. GOLDBERGER. I would prefer to.

Mr. TAVENNER. Very well. Proceed.

Mr. GOLDBERGER. Thank you.

AMVETS since its inception has been unalterably opposed to communism and Communist agitation in this country.

Article IV of our national constitution specifically provides:

> No person who is a member of, or who advocates the principles of, any organization believing in, or working for, the overthrow of the United States Government by force and no person who refuses to uphold and defend the Constitution of the United States shall be privileged to become, or continue to be, a member of this organization.

This constitutional provision has always been construed to mean that no person who belongs to the Communist Party or who espouses Communist principles shall be a member of AMVETS.

We believe that what is healthy and good for AMVETS is healthy and good for the country at large; we believe that some form of national proscription against Communists is essential to the well-being of the Nation, too; this belief is based on the firm conviction that no member of the Communist Party can maintain allegiance to the United States of America or can uphold and defend the Constitution of this country so long as he obeys the dictates of the Communist Party, which has demonstrated through scores of its actions that it is taking its orders from a foreign government. We further believe that the American people realize this and are in little danger of being misled if they know in advance that the spokesman is affiliated with the Communist Party.

AMVETS' national commander appeared before the House Committee on Un-American Activities on February 10, 1948, and asked in part that Congress take measures toward controlling the Communists in this country such as:

1. That any person who is a member of the Communist Party or of any organization, association, or other combination of individuals which is dominated, directed, or controlled by the Communist Party to be required to register publicly with the Department of Justice as an agent of a foreign principal;

2. That all publications, papers, and any and all mediums of political propaganda disseminated by such persons or organizations be clearly labeled under the law for what it is; namely, Communist propaganda;

3. That the postal regulations concerning the dissemination of the propaganda described above be drastically tightened to restrict their mailing privileges to first-class mail only;

4. That officers of all subversive groups be made personally responsible for the registration of their groups.

These measures have been substantially incorporated in H. R. 7595. AMVETS supports this bill.

At our last national convention the following resolution was adopted unanimously:

AMVETS urge the enactment of legislation requiring the registration of all Communists, Communist-front organizations, and all other people or groups advocating the overthrow of the United States by force or by subversion.

No Americans have made greater sacrifices to safeguard freedom in America than have the veterans of World War II. Today we continue to jealously guard those freedoms which we successfully defended at such great cost during the recent horrible war.

Many who oppose this bill have said that its provisions endanger our civil liberties—that thought control would result. Careful study of H. R. 7595 should dispel these fears. No part of this legislation restrains any individual or organization from expressing ideas or convictions in any field so long as these beliefs are labeled as beliefs of the Communist Party. How can the sincere defenders of civil liberties in this country fail to rally behind legislation aimed at those organzations or people who would treasonably, with the help of a foreign government, take away these very liberties in question? Let them stand up and be recognized for what they are so that the American people will know whom they represent.

Under section 14 (d) of H. R. 7595 are adequate safeguards for fair hearings before the Subversive Activities Control Board. No innocent parties have cause to be alarmed. Under section 15 our Federal courts continue to stand guard over civil liberties and the right to fair trial of the accused.

(Representative McSweeney enters hearing room.)

Mr. GOLDBERGER (continuing). Americans must awaken to the fact that Communist Russia has overrun more countries since World War II than Hitler's Germany did in precipitating the war. The Communists prefer to attack from within, but the results are the same. It would be a fatal mistake for Americans to fail to defend themselves at home as well as on our frontiers. We urge the immediate passage of H. R. 7595.

Mr. WOOD. The witness, Mr. McSweeney, is Mr. Goldberger, who is national legislative director of AMVETS, and who has just read the prepared statement which is before you.

Mr. MCSWEENEY. I am an ex-serviceman of the last war, and I commend your interest in what we contend is the best peacetime activity in which you could engage. I hope to be a member of your organization at some time.

Mr. GOLDBERGER. We would be very happy to have you with us.

Mr. WOOD. Mr. Moulder.

Mr. MOULDER. No questions.

Mr. WOOD. Mr. Velde.

Mr. VELDE. I notice you haven't commented on H. R. 3903, which is Mr. Wood's bill, and which has for its objective making it unlawful for Federal employees and for individuals employed in connection with national defense contracts to become members of or affiliated with the Communist Party. Do you care to comment on this bill?

Mr. GOLDBERGER. I was primarily concerned this morning with H. R. 7595, in view of the fact I received a letter that comments on

this bill would be received. I don't feel at this time I am qualified to comment on the other bills.

Mr. VELDE. In this bill, H. R. 7595, nothing is said about the registration of Nazi or other subversive organizations, but only of the Communist Party.

Mr. GOLDBERGER. That is correct.

Mr. VELDE. Do you have any opinion regarding the feasibility of placing these other organizations in the bill, requiring their registration?

Mr. GOLDBERGER. It appears to me that inasmuch as fascism is equally as dangerous as communism, the bill could be broadened in its terms so as to cover both dangers. I feel that redrafting with that thought in mind would more adequately carry out the purpose of the bill. I think the Congressman's thought is a very good one, and I will be glad to accept that as my opinion.

Mr. VELDE. In other words, the American people have always tried to be fair to all groups, and if we are going to require the registration of one subversive group, we should require the registration of all such groups.

Mr. GOLDBERGER. I quite agree with the Congressman. I shall be very happy to accept that thought as my opinion. I feel equally strongly as to both fascism and communism.

Mr. VELDE. The argument has been advanced that legislation of this kind might drive the Communist Party underground, and the answer has been made that the effective part of the Communist Party has been underground for a long time. Have you any comments on that?

Mr. GOLDBERGER. Once again the Congressman has answered the question. I think we have not been too successful in combating them underground. I think we should find some means to reasonably control communism through these other groups.

Mr. VELDE. As a matter of fact, it would probably drive them above ground more than underground; it would have that tendency?

Mr. GOLDBERGER. Yes; it would tend to drive them above ground. At least it would place them on notice and place the American public on notice. Furthermore, if and when we find it necessary to prosecute, certainly they could not contend at that time that they didn't have notice, and I think it would make the prosecution of such a thing more feasible to handle.

Mr. VELDE. Then, too, I suppose that the opponents of this bill will bring forth the idea that it is an infringement upon the freedom of thought and action and political belief. Do you feel that this bill would be such an infringement?

Mr. GOLDBERGER. I don't, and for this reason: I have always felt that our constitutional guaranties as to freedom of expression and other freedoms guaranteed under our Federal Constitution are qualified freedoms. I say qualified in that they are directly relative to the American welfare as a whole. I can't see whereby we would completely uphold any one of those freedoms if it would work a disadvantage or a danger to American society.

I think many of the constitutional interpretations by our United States Supreme Court have held these are qualified privileges and qualified rights, and anything that is reasonable I think is a qualification of those rights. If we arrive at the point where we feel it is

reasonable to the safety of our country to impose certain restrictions, I would say it is not a danger to our constitutional safeguards.

As I say, Mr. Congressman, it must all be within reason. As to what is reasonable within reason is a matter of personal opinion, and I doubt if any two individuals in the world will agree on what is reasonable in all instances.

Mr. VELDE. I agree with you.

Mr. GOLDBERGER. I think we must abide by the opinion of the majority, because that is our concept in the first instance.

Mr. VELDE. In other words, we might be infringing on the rights of some, but by this legislation we will be protecting the rights of the great majority?

Mr. GOLDBERGER. That is right.

Mr. VELDE. I quite agree with you. That is all.

Mr. WOOD. General Kearney.

Mr. KEARNEY. There has been some testimony concerning political parties. Do you agree with me that the Communist Party is not a political party, but a revolutionary party dedicated to the overthrow of this Government by force and violence?

Mr. GOLDBERGER. Yes; I believe that is a fact, plus the additional fact that that movement is directed by a foreign government, and I believe for that reason there should be great control, or some control, at least.

Mr. KEARNEY. Do you further agree with me in my thoughts that it is not only obligatory on our part to prepare ourselves militarily for adequate defense, but also to look after the internal security of the country by legislation such as that on which we are having these hearings?

Mr. GOLDBERGER. I definitely do, especially in view of what has taken place in the world in the last 15 years. We have seen movements that have snowballed into catastrophes, and, as I said before, any legislation that is reasonable I think is a very wise precaution.

Mr. KEARNEY. I think you have already answered the question to Mr. Velde that H. R. 7595, after fair scrutiny, is reasonable legislation?

Mr. GOLDBERGER. I was particularly impressed with the provisions on the procedural aspects before the Subversive Activities Control Board, the various provisions as to due process, and the provisions as to review of the determination by that Board. I think, in substance, the bill complies with every provision of the Constitution of the United States, and as a lawyer I personally at this time would feel that the provisions are constitutional.

Mr. KEARNEY. Whether it be this particular bill or some similar bill, you believe the time has come, the time is now, for some sort of legislation in order to protect the interests of our country?

Mr. GOLDBERGER. Yes, I do; I definitely do. As to the strength of the legislation, that is a matter of opinion, but I definitely feel some means of control in the form of legislation should be enacted.

Mr. MCSWEENEY. In carrying out General Kearney's suggestion, I was interested in your interpretation; we are not opposed to the formation of any party, but we want to have them within the purview of the Constitution. They can have any thoughts they want in connection with an amendment to the Constitution, but a party that goes

beyond that and wants to destroy the Constitution itself then becomes, as I understand the General, a subversive party?

Mr. GOLDBERGER. I think it is firmly established in our American jurisprudence that any effort to change laws of our Nation by peaceful means is lawful, but any effort to change laws of our Nation or our form of government by forceful means is regarded as unlawful.

Mr. MCSWEENEY. I think that distinction is important. There is no objection to any political party as long as it is within the purview of the Constitution.

Mr. GOLDBERGER. That is right. I know there is some law or some decision I have read to the effect that any peaceful means of attempting to change Federal law is perfectly lawful, but when it resorts to force or violence, then, inasmuch as it is an unlawful act, I think the Government should take steps to control that possibility.

Mr. MCSWEENEY. A party could even go so far as to say by regular provisions of our Constitution it could call an assembly to rewrite our Constitution; isn't that true?

Mr. GOLDBERGER. That is correct. I have enough confidence in the American people to feel there would not be the slightest danger there. I think the good judgment of the American people would stabilize any effort to rewrite our Federal Constitution or any other Federal laws. I think any time you have enough Americans together conscientiously interested in a project of that sort, there would be enough stability in the people present to do a good and sound job. Once again we get into the question of what is good and sound, I realize, but I have that confidence in the American people.

Mr. MCSWEENEY. Thank you.

Mr. WOOD. Mr. Goldberger, if your organization, after giving some thought to it, since the committee is also considering other legislation, has any suggestion to make regarding other legislation being considered by the committee, and particularly H. R. 3903, the committee would be very happy to have you submit it in writing in the near future.

Mr. GOLDBERGER. Fine, sir.

Mr. WOOD. And permit me to express the appreciation of the committee for your appearance here and for the comments you have made.

Mr. GOLDBERGER. Thank you for the opportunity to be present and to testify.

Mr. TAVENNER. Is Mr. George D. Riley here?

Mr. RILEY Yes.

Mr. TAVENNER. Mr. Chairman, Mr. George D. Riley is a member of the legislative committee of the American Federation of Labor and is prepared to be heard.

Mr. WOOD. Mr. Riley, we will be very glad to hear you. Do you solemnly swear the testimony you give the committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RILEY. I do.

TESTIMONY OF GEORGE D. RILEY

Mr. RILEY. Is it the pleasure of the committee that I read this statement?

Mr. TAVENNER. Yes. For the benefit of the record I would like to get your name and position.

Mr. RILEY. My name is George D. Riley. I am a member of the legislative committee of the American Federation of Labor.

Mr. TAVENNER. I would like to ask you the same question we have asked all witnesses appearing here.

Mr. RILEY. I know what it is, and I will be very happy to answer that. I am not now nor have I ever been nor do I ever intend to be a member of the Communist Party, Fascist Party, or any other un-American party.

Mr. TAVENNER. You may proceed to read your statement or make an oral statement, as you choose.

Mr. RILEY. I would prefer, with the permission of the Chair, to read it.

Mr. WOOD. Very well.

Mr. RILEY. Mr. Chairman and gentlemen, no organization has fought communism longer or more consistently than the American Federation of Labor. Nor have we limited our fighting only to communism. Further, we were first to get into Europe to pick up the economic pieces in an attempt to reconstruct the Continent. In addition, as early as 1945 we launched an intensive campaign on the World Federation of Trade Unions as communistic. Instead, we organized, in league with other free-trade unionists, the new International Confederation of Free Trade Unions, of which, I am sure, you have been reading.

The American Federation of Labor is 1 of the 66 actively participating organizations in the anti-Communist conferences now proceeding. Senator Mundt addressed that conference recently. But it should be noted that the conference failed to endorse the Mundt bill or the Nixon bill or the Wood bill.

Everything done by the American Federation of Labor is on a strictly voluntary basis. This practice has convinced us that our educational work has succeeded. The A. F. of L. has no Communist problems. Our unions well know the perils of communism, as we do the perils of other anti-American "isms." The consequence has been we have gone out, as the first line of defense, both externally and internally, and have done something about it, in fact a great deal. We certainly are not without full information and much documentation on the manner in which Hitler, Mussolini, and Stalin have dealt with unions. I might add we also know a few things about Trotzskyism which, though dormant or underground for the moment, nevertheless is entitled to be fully patrolled continually.

It is because of our knowledge of these "isms" that we are convinced the bill H. R. 7595 goes only in one direction. Yet this is not the main objection we have to this proposed legislation. We are on record from several conventions as opposed to the manner in which this bill has been drawn. Following is the language of our executive council from 1949, which report was adopted unanimously by the St. Paul convention:

S. 1194 by Senators Mundt and Johnston of South Carolina, and S. 1196 by Senator Ferguson, bills designed for the protection of the United States against un-American and subversive activities, were introduced and referred to the Senate Judiciary Committee. We testified in opposition to the bills, although we are in complete accord with the idea of protecting the United States from all un-American subversive activities from without or within the country, the terms of the bills are un-American in themselves.

That was directed at the 1949 version, because this convention was held in October, and referred specifically to S. 1194 and S. 1196.

The A. F. of L., for many, many years has been in the forefront of the battle against Communists, Fascists, and other un-American groups. Not only have we warned our affiliates against them, but, by circular letters we have requested that the Communists be denied membership. We abhor and detest all such "isms" but the terms of the bills are such that we cannot support them as they would indirectly deprive the voters of this country the right to freely express themselves at the polls. We have full confidence that they will never elect a communistic or other subversive party to take control of this country.

The Mundt-Johnston bill—

I am now getting to the bill that was considered and reported out recently by the Senate committee, Mr. Chairman.

The Mundt-Johnson bill sets up a Subversive Activities Control Board of three with extraordinary powers over minority political parties and voluntary organization of citizens. The Board is permitted to designate political parties or voluntary organizations as Communists or Communist-front organizations. If the bill becomes law, such political organizations must register with the Attorney General and disclose the names of their membership and Communist-front organizations must register and name their officers publicly. All material sent out by them, by air or ordinary mail, must be designated as coming from a "commie" source. Membrs of these political organizations could not hold nonelective Federal positions or secure passports. While the Board would not have the authority to outlaw organizations as designated by the Board, such organizations so designated would be terribly hampered. The bill would permit the setting of precedents which might result disastrously to labor organizations themselves and for these reasons, as above stated, we opposed it.

The difficulty of enacting legislative protection against the activities of the Communist Party and their agents lies in defining such acts and providing penalties without also restricting the rights and liberty of free citizens. The most effective action and defense against these subversive groups and persons lies with voluntary organization.

Each organization has the responsibility of keeping its own membership free of these subversive agents of foreign governments and its prestige unembarrassed by those who work to destroy the freedom of democracy. Each organization must keep its membership informed on Communist tactics, Communist Party undertakings, and Communist-front organizations.

With dependable information free citizens can protect themslves. We have a right to expect equally great care on the part of the Government in selecting personnel and enforcing immigration and passport law.

That concludes the quote from that report which was adopted unanimously by the St. Paul convention, Mr. Chairman.

The present bill, H. R. 7595, is practically a duplication of other bills, with only minor alterations. Substantially it is the same. For this reason, the A. F. of L.'s comments are substantially the same. As completely convinced as we are that the Communists must be dealt with forthrightly and unequivocally, we believe that the end justifies the means only so far as it does not do the same kind of violence to innocent persons and organizations as the disease we have set out to curb and cure. This is said fully mindful of the 2-to-1 decision last Wednesday in the Dorothy Bailey case, wherein it was said that the state must come first for consideration, then the individual. Of course, this matter is still not settled finally by the court of appeals, but is going up to the Supreme Court.

In the A. F. of L. we believe that the same effects can be accomplished, national unity can best be served, and processes for which we express the greatest endearment can be most adequately preserved if we look where we are going while we are on our way.

The Mundt-Nixon bill, as it was finally amended and as it finally passed the House, purports to be an attempt to control, if not outlaw, Communist activities in the United States. This is accomplished by broadly defining what constitutes "Communist political organizations" and "Communist-front organizations," and requiring organizations coming within such definition to register with the Attorney General and disclose its officers and members. Various penalties are then imposed upon any person who is a member of a Communist political organization, among them being loss of right to seek Federal office, loss of Federal job, loss of passport rights and public exposure, and finally, the organizations themselves are denied exemption from income-tax laws and are restricted in the use of the mails.

Whether an organization is or is not a Communist organization is to be determined through administrative hearings conducted by the Attorney General. Appeals from his determinations can be carried to the Court of Appeals for the District of Columbia, but the Attorney General's finding is conclusive if supported by the preponderance of the evidence.

The foregoing constitutes a broad summary of the lengthy 28-page bill.

After entitling the act the "Subversive Activities Control Act of 1950" in section 1, section 2 specifies in the various subparagraphs the necessity for the legislation. The Congress makes legislative findings to the effect that a Communist totalitarian dictatorship is characterized by identification of party and government, ruthless suppression of opposition, and denial of all civil liberties. It is further found that a world Communist movement exists whose purpose it is to establish a Communist totalitarian dictatorship in all countries. Direction and control of this movement is vested in a "Communist dictatorship of a foreign country." This dictatorship uses political organizations in other countries as constituent elements of the world movement, such political organizations being controlled directly by the foreign dictatorship and having no independent existence.

The political organizations which are a part of the movement are organized on a secret basis and often operate through organizations known as Communist fronts, which, again, are operated so as to conceal the true character and purposes of the organization. Individuals participating in the world Communist movement, in effect, repudiate their allegiance to the United States and transfer it to a foreign country. The movement has already installed a Communist dictatorship in a number of countries, and the movement constitutes a clear and present danger to the security of the United States and the existence of free American institutions.

Section 3 contains the various definitions. The most important of these are the definitions of "organization," "Communist political organizations," and "Communist-front organization."

An "organization" is defined to include any group, incorporated or unincorporated, which is "associated together for joint action on any subject or subjects." This definition would include, clearly, all labor organizations.

It is noted that H. R. 7595 has eliminated a considerable amount of verbiage in section 3 under "definitions" which was contained in the 1948 version. In 1948, the bill went to some length to particularize on the nature and scope of forbidden activities. At that time the Ameri-

can Federation of Labor pointed to some highly objectionable features. For example, we said that the "characteristics of a political party which it may be reasonable to conclude" were under control of a foreign government was untenable language. It is gratifying to note that our suggestions at that time were sufficiently acceptable to be considered. May we hope that the bill can be further constructed to relieve it of ambiguities which would allow some future Attorney General who might have the same type of thinking as did A. Mitchell Palmer, for example, to pounce upon labor unions for good clean fun and laughs and to read into the law all sorts of inferences personal whim might suggest.

A combination of almost any two of the qualifying subsections in the 1948 bill could easily have lent themselves to providing a basis for finding that an organization in question is a "Communist political organization."

Now it so happens that there are some labor groups which stand for adequate housing programs, national health programs, Government regulation of utilities, including telegraph and railroads. And there are some others which think that poll taxes should be abolished. At the same time the Communists have seized upon these themes as something to allow them to make headway by cashing in on this or that campaign. How easy it can be for an Attorney General or, in the present bill, the Board administering the "Subversive Activities Control Act of 1950," to find that because Communists sponsor some of the same things as some labor unions, that the labor unions per se are guilty of supporting communism.

It may be far-fetched to say that the Board possibly would seize upon the fact that unions would stand guilty of being under control of a foreign government because of their use of the strike weapon, it nevertheless is true that Russian revolutionists, Lenin and Stalin, have preached the doctrine of incitement to strike. I might add that Leon Trotzsky would not have been unfamiliar with the same idea. But unions were striking before Messrs. Trotzsky, Lenin, and Stalin got going as a team. May I comment that the Trotzskyites have been given far too little notoriety in recent years. Merely because they are today's underdogs in the world Communist conflagration is no reason for overlooking them. I cannot imagine they are any friends of ours by reason of their presently losing battle with Uncle Joe.

I have read the Senate report accompanying S. 2311. the companion to H. R. 7595. I note some judicial discussions and while I am no constitutional authority and do not intend to get into a discussion on that point, may I suggest the decisions in two cases, as cited by our own legal department, in regard to hostile officials and the acts they could commit under a law favorable to their purposes. Our legal department has suggested that condemning a group by association because it has espoused causes which espousal came along ago would, by indirection, be in the self-same classification as a more recent aggregation which got its direction from abroad would have a questionable constitutional connotation. In this connection is cited the United States Supreme Court's determination in *Board of Education* v. *Barnette* (319 U. S. 624), where the Court said:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act

their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

The Supreme Court likewise has condemned the same concept in *Bridges* v. *Wixon*, Mr. Justice Murphy speaking, as follows:

> The doctrine of personal guilt is one of the most fundamental principles of our jurisprudence. It partakes of the very essence of the concept of freedom and due process of law * * * It prevents the persecution of the innocent for the beliefs and actions of others. (See Chafee—Free Speech in the United States (1941), pp. 472–475.)

In the 1948 bill from which some language has been deleted in the present bill it would have been permissible to conclude that any organization whatsoever concerning which "it is reasonable to conclude" must have been getting its directions from faraway places, could be adjudged by the Board to be subversive. I have not heard of an administrative or quasi-judicial board which did not draw "reasonable conclusions" in its own judgment and which would not do everything to support and justify its "reasonable conclusions." But thanks to this committee, that particular language was left out of this bill.

Section 4 makes specific acts unlawful and punishable by heavy fine and imprisonment. These are attempting to establish a totalitarian dictatorship under direction of a foreign government, performing any act with intent to bring about the establishment of such dictatorship, actively to participate in any movement to bring about such dictatorship, or to conspire to do any of the foregoing, and an alleged violator may be persecuted any time during his entire life.

It would seem that in the face of such penalties, some further recognition is needed for a lifelike case which happened in 1944. A man who previously had admitted to a Senate committee that he had cavorted closely with Communists then said he had been mistaken in his choice of associates and had decided to mend his ways. Later he was nominated and confirmed for one of the highest offices in the gift to any man in the executive branch, despite demonstrated background. I find nothing forbidding the appointing power and the Congress itself to agree to the selection of persons such as this.

It is important to return to the theme of this presentation, i. e., the definitions in the bill continue to be too broad and too loosely worded. We are not offering a brief for the American Civil Liberties Union, but merely offer this as an example. Would it be possible for this or some similar organization to know whether it might be adjudged a Communist organization and thus subject to the calumnies and restrictions of the act? Where would the Americans for Democratic Action stand—and here again I certainly am offering no brief for the ADA—once this bill is enacted in its present form? The ADA stands for some of the same things as some other organizations. And there have been and there may still be some members of Congress who have been said to "agree" (as used in section 4 (a)) with certain history-making events now going on the world around. I cannot find in the bill where such members would be subject to the law's provisions, unless they too are to be classed as "officers and employees."

With these remarks, Mr. Chairman, I conclude my testimony, prayerful that there will continue to be further improvements made in this bill and mindful that the intentions of this committee are well in line with the thinking of the American Federation of Labor, though all the methods are not in agreement.

And finally, I want to tell you of the individual invitations which you will receive soon to attend the Flag Day observance at the Sylvan Theater under auspices of the Government Employees' Council of the American Federation of Labor. I have the honor to be a cochairman, along with William C. Doherty, vice president of the A. F. of L. It is our earnest desire that everyone who believes as we do will be there June 14, and will stand up and be counted while we give the pledge of allegiance. I hope all of you will make it a date.

Mr. Wood. Mr. McSweeney, do you have any questions?

Mr. McSweeney. Mr. Riley, I have no right to speak for the committee, but I do believe we are encouraged by the fact that these veteran organizations, together with your splendid organizations of labor groups, are determined that no subversives shall infiltrate into your organizations and undermine the foundations on which you have had such a fine degree of success.

Mr. Riley. The A. F. of L. went rat chasing some years ago. I don't know how many they found, but they have been chasing them a long time.

Mr. McSweeney. Don't you feel if each of those organizations puts on its own determined campaign to see that no subversives get in, then we will drive them out in the open and they will have to take on their own organization, which we can earmark?

Mr. Riley. How often we overlook the importance of education. We have had an education bill in Congress for many years which has made no headway. Adult education is important also.

Mr. McSweeney. I served in Italy during the war 3 years, and in talking to once-members of the American Federation of Labor I found the first method used by the Communists in Italy was the infiltration of labor unions in Italy. I hope fraternal organizations and every organization will make its own determined effort to prevent the infiltration of subversives.

Mr. Riley. I had the honor of being a BPOE for many years, and 25 or 30 years ago I know it was the ritual, and I understand it still is the ritual, the week Flag Day falls there is a considerable to-do about the importance of that flag and the meaning to us. If all organizations would do that, we wouldn't be in this situation today.

Mr. Wood. Mr. Moulder.

Mr. Moulder. It appears from your statement and the statements I have heard by veteran organizations that there really is no difference in the objective of the organizations to discourage and eliminate subversive activities. Your criticism is directed at the method as proposed by the bill that you have referred to as H. R. 7595?

Mr. Riley. Yes, sir.

Mr. Moulder. And particularly the Subversive Activities Control Board. As you express it in your statement, whether an organization is or is not a Communist organization engaged in subversive activities as defined in this bill is a matter for the arbitrary determination of the Board?

Mr. Riley. That is right.

Mr. Moulder. And, as I understand your contention, and it certainly is in accord with my belief, before any person or citizen should be deprived of his citizenship rights of freedom or liberty or property, he is entitled to due process of law, and it is a fundamental

right of a citizen to have a trial by jury when anything is in issue involving his rights, liberty, or his property.

Mr. RILEY. This country is strong enough to lick totalitarian methods without legislation. For example, you use the word "agree" in section 4 (a) under the heading "Certain Prohibited Acts" on page 8, beginning at line 10: "It shall be unlawful for any person knowingly to combine, conspire, or agree with * * *." That is going considerably out of the way to read a person's mind, unless there is some action that goes with that agreeing. The word "agree" if left to stand alone, and it seems to stand alone there, can cover anything.

Mr. MOULDER. Is it your opinion that an administrative board is inclined sometimes to become a prosecutor instead of a disinterested or impartial board or body to determine the facts?

Mr. RILEY. That is happening every day in the present Presidential procedure on disloyalty, and it is only the checks and balances of the Richardson Commission—some cases I have knowledge of have come out against the accused, but on review they came out in favor of the accused. You have all had experience with these bureaucratic set-ups. You know what bureaucracy can do. Bureaucracy did it in Italy and Germany and is doing it in many parts of the world today.

There is a bill on which hearings were held down the hall yesterday in the Post Office Committee. It proposes to take out of the job on sight Joe Doaks or anyone else, by bureaucratic fiat, if it is decided in the mind of the bureaucracy that he is a bad security risk. Well, that bill has no counterbalance in it. There is a review procedure where the man who wants to get rid of a person may do so on a review basis. This is an important thing we are doing, dealing with a person's life and limb. We can do violence to ourselves while we are attempting to do violence to our enemy.

You have done a splendid job up to this point. In 1948 you had some pretty strong language, "reasonable doubt" and that sort of thing. What is reasonable doubt? The sky was the limit. It was all a part of the mental process.

Well, I could fulminate the rest of the day, but I know you don't want me to do that. We believe in this sort of thing, too, but there are ways of doing it and ways of not doing it.

Mr. WOOD. Mr. Velde.

Mr. VELDE. We all appreciate the fact that the A. F. of L. and its affiliates are doing everything you can on Americanism to oppose any totalitarian dictatorship, especially communism, in your unions. I don't want to pry into the affairs of your executive council, but can you tell us whether a vote was taken on the Mundt-Nixon bill and the outcome of the vote?

Mr. RILEY. The report of the executive council is headed "Mundt-Nixon Bill," and the very statements and principles I read all appear under that heading. Further along in the book there appears the convention action, and the convention action was unanimous. It must have been voted on or it could not have been unanimous.

Mr. VELDE. No one called for a roll call?

Mr. RILEY. I don't think so. My goodness, I don't know how many delegates were present. It was a national convention, and the voting strength is numbered in hundreds of thousands, and, if only one vote was counted for each unit, 160 names would have to be called.

I don't know whether there was a roll call. If you want me to check that, I will.

Mr. VELDE. No, it is not important. I wanted to know how unanimous this action was.

Mr. RILEY. Minutes are kept and the proceedings go into minute detail further along. I was speaking in terms of the report of the executive council plus the action of the convention itself. I will be glad to look it up and see if there was a roll call.

Mr. VELDE. If you have time, I will appreciate it.

Mr. RILEY. I will be glad to do it.

Mr. VELDE. As far as H. R. 7595 is concerned.

Mr. RILEY. That is the one I have been discussing.

Mr. VELDE. I have been discussing the original Mundt-Nixon bill. On this bill have you had an executive council meeting; that is, on H. R. 7595?

Mr. RILEY. This is a new bill, introduced on March 7, 1950. We only have our meetings in the fall. Of course, there are interim executive council meetings quarterly, however the last one started on January 30, before this bill went in.

Mr. VELDE. I had in mind whether or not the things deleted from the original Mundt-Nixon bill might change the opinion of the executive council of the A. F. of L.

Mr. RILEY. It certainly moderated the opinion on it, but it will be the last of April or first of May before there is another executive council meeting. If you can wait until then, I certainly will ask that they consider it at that time.

Mr. VELDE. We are always glad to have the opinion of labor organizations such as the A. F. of L. I wonder if you have a feeling yourself that no legislation is needed at all?

Mr. RILEY. I haven't said we don't need legislation to protect this country.

Mr. VELDE. It appears to me that over a period of years we have had this kind of problem constantly with us.

Mr. RILEY. Absolutely, and it is getting more intense, and the remedies proposed need to be intense.

Mr. VELDE. It appears to me we have not, by ordinary means of exposition of the problem, been able to combat it successfully. I am referring to the case of Alger Hiss and other American Communists in this country who have been operating for a long time and we have been unable to do anything with them under our laws.

Mr. RILEY. You only got Mr. Hiss by indirection, as being a perjurer rather than having committed the act.

Mr. VELDE. Your personal opinion is that there should be some law passed, or some laws we already have, amended to handle the problem?

Mr. RILEY. This committee is entitled to a lot of applause. It is like buying a new automobile. You have to go under 35 miles an hour at first to keep from stripping the gears. You have a new car here.

Mr. WOOD. General Kearney.

Mr. KEARNEY. I want to add my thanks for your very complete statement, particularly your thoughts on education. I think all organizations, whether fraternal or otherwise, should bring to the attention of their membership the situation as it exists today, and possibly a lot of legislation could be done away with entirely. There

should be Flag Day observances all over the Nation such as you will have on June 14.

Mr. RILEY. We take our hats off to no one when it comes to our work on Americanism.

Mr. KEARNEY. I notice on page 2 of your statement you refer to the passport situation. As it stands now, the Department of State has a right to deny a passport to any individual for various reasons.

Mr. RILEY. I was pointing out some of the high spots.

Mr. KEARNEY. As I understand your remarks, the American Federation of Labor does not object to legislation on this subject provided it is the type of legislation that should be enacted; that is, that protects individuals against thought-control or persecution?

Mr. RILEY. We don't want to be caught in the middle because maybe sometime some of our affiliates might have been thinking in terms of public ownership and the Socialist Party.

Mr. KEARNEY. Don't you agree in many cases we hear of today a lot of the individuals were brought into Communist-front organizations through what, to me, is a sucker list. They are innocent people who just get caught. For instance, an individual might be vitally interested in the peace of the world, and some committee comes to him and says: "We would like you, as an outstanding citizen, to join our committee and come out for peace." Then the committee might turn out to be a Communist front.

Mr. RILEY. Do-gooders. He wakes up some morning and finds his picture on the front page as a subversive. Some years ago there was a person in the Government here who was invited by the Washington Book Shop to get her name on their list, and they said: "Look how much money you can save on phonograph records and books." This committee finally cited that outfit, and she was horrified. She comes from up-State New York, the heart of America, and this was the first time she had come to Washington, to work in the Government.

Mr. KEARNEY. I agree with you that up-State New York is the heart of America.

Mr. MOULDER. Mr. Chairman, I would like to ask a question.

Mr. WOOD. Mr. Moulder.

Mr. MOULDER. Briefly summarizing your views on this proposed legislation, is it this: That you are not opposed to the passage of legislation which has as its objective the elimination of the dangers of un-American or subversive activities?

Mr. RILEY. Not in the slightest.

Mr. MOULDER. But you are appealing to the committee to conscientiously study the proposed legislation and to eliminate any provisions that might be based on passion or prejudice?

Mr. RILEY. That is right.

Mr. MOULDER. So that such legislation will protect the fundamental laws of our country as to due process of law so that no innocent person might be injured?

Mr. RILEY. You will let a lot of guilty ones go through, but you will protect the innocent ones.

Mr. WOOD. I believe I can assure you that the membership of this committee is in hearty accord with your view that utmost diligence should be given to see that whatever legislation this committee may

report in this field shall have such protection so that no innocent person shall be injured thereby.

Mr. RILEY. Mr. Mandel called me a couple of weeks ago, and I came up here and he said: "What are the objections to this bill? What is wrong with it?" As a matter of fact, I pointed out as many suggestions for improvement as I did objections to the bill in its present form. For example, I pointed out that the words "stations," "reservations," "outposts," of no sort are mentioned. You have everything else. I also pointed out that, while you are talking about periodicals and magazines and radio, you haven't mentioned one form of communication which to me was quite obvious, because I used to be in the field, and that is a publication where an organization or a printing outfit can incorporate and immediately upon completing the job go out of business. It didn't seem to me that type of publication was included. I made some suggestions for improving the bill; so I think I ought to get 50–50 on this thing.

The second observation I wanted to make is in line with Mr. Kearney's questioning awhile ago. In 1945, shortly after the Labor Party came to power in England, there was held at Blackpool, England, a meeting of the Federated Trade-Union Congress, and there were sent from the A. F. of L. two fraternal delegates, one of whom is our national secretary and treasurer, Mr. George Meaney. George let go a broadside on those fellows that awakened them. He let them know not only that he felt they were lackadaisical or in the doldrums but that American labor was not. That was in the spring of 1945. I don't think the war was over, or it was just getting over. He pointed out to the British that as long as they stayed in the World Trade-Union outfit they were going down the drain and the suction would carry still more along.

He was almost hooted down, "Withdraw, withdraw," but he had the courage of his conviction and he said, "No, I am going through with those remarks," and he went through with them. That was the opening gun in our modern fight on communism and other "isms."

Mr. WOOD. This committee is cognizant of the efforts of your organization, and we feel your organization is entitled to commendation for the fight you have made against this menace to the American way of life.

Mr. RILEY. It is swell of you to say that.

Mr. WOOD. I express to you the appreciation of the committee for your time in coming here and for the information you have given us.

Mr. RILEY. Thank you, Mr. Chairman.

Mr. WOOD. The committee will stand adjourned until 3:30 this afternoon.

(Thereupon, at 12:30 p. m., on Friday, March 24, 1950, a recess was taken.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

TUESDAY, MARCH 28, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The subcommittee met, pursuant to adjournment, at 10:30 a. m. in room 226, Old House Office Building, Washington, D. C., Hon. John S. Wood (chairman) presiding.

Committee members present: Representative John S. Wood, Francis E. Walter, Burr P. Harrison, and Morgan M. Moulder (arriving after beginning of proceedings, as indicated).

Staff members present: Louis J. Russell, senior investigator; Donald T. Appell and William Jackson Jones, investigators; John W. Carrington, clerk; Benjamin Mandel, director of research; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order. The record will show that there are present Messrs. Walter, Harrison, and Wood.

Are you ready to proceed?

Mr. RUSSELL. Yes, sir. Mr. Sigal.

Mr. WOOD. Mr. Sigal, will you please hold up your right hand and be sworn. Do you solemnly swear the evidence you give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SIGAL. I do.

Mr. WOOD. Have a seat, sir.

TESTIMONY OF BENJAMIN C. SIGAL

Mr. RUSSELL. Will you state your full name?

Mr. SIGAL. My name is Benjamin C. Sigal.

(Representative Moulder enters hearing room.)

Mr. RUSSELL. What is your present address?

Mr. SIGAL. Washington, D. C. Do you want my home address?

Mr. RUSSELL. Yes, please.

Mr. SIGAL. 6301 Sixteenth Street NW.

Mr. RUSSELL. What is your present occupation?

Mr. SIGAL. I am an attorney. I am appearing here in behalf of the Americans for Democratic Action. I am chairman of the Washington Chapter of the Americans for Democratic Action.

Mr. RUSSELL. Mr. Sigal, it has been a policy of this committee to ask witnesses testifying concerning proposed legislation whether or not they have ever been members of the Communist Party or are

members of the Communist Party at the present time. Will you answer that question?

Mr. SIGAL. Yes, I will. I am not a member of the Communist Party and I have never been a member of the Communist Party.

Mr. RUSSELL. Do you have a prepared statement?

Mr. SIGAL. I do.

Mr. RUSSELL. Mr. Chairman, I suggest that Mr. Sigal be permitted to read his statement into the record at the present time.

Mr. WOOD. Very well, Mr. Sigal. We will be glad to have you do that.

Mr. SIGAL. Thank you, Mr. Chairman.

As I stated, I am speaking here in behalf of the Americans for Democratic Action, popularly known as ADA.

The ADA is unalterably opposed to communism, but we are equally opposed to any denial of the basic civil rights and liberties. It is our conviction that the measure pending before this committee is unconstitutional; that it seriously curtails rights of free speech and thought; that it will in effect materially aid the Communists; drive them underground and greatly enhance their chances for success.

While we are strenuously opposed to the views of those who would be immediately affected by H. R. 7595, we must recognize the perils to which legislation of this type would expose the whole Nation.

Today, Communists are condemned as un-American because their motives are suspected; and so, if H. R. 7595 were to become law, those who furthered the Communists' program would be penalized. What of tomorrow? May the Congress of some future day conclude that other political faiths are equally un-American and subversive and must, therefore, be subjected to restraints and penalties? Can we safely accept the proposition that the advocacy of ideas may be forbidden, without reference to specific acts of a criminal nature? We think that our whole constitutional development shows that actions, not beliefs or ultimate goals, must be the sole tests of legality.

Mr. WALTER. In that connection, don't you feel it would be advisable to spell out the type of action which would be made illegal?

Mr. SIGAL. Unquestionably. We believe that is one of the basic defects of this bill. The bill, of course, does attempt to spell out acts, but we think the definition is so vague and indefinite that there is no adequate guide for the determination of the criminal act, and there is no adequate notice of what constitutes a criminal act. I will go into that more specifically in consideration of the specific sections where we think that that reveals itself.

Chief Justice Hughes declared a decade ago:

> The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. *De Jonge* v. *Oregon* (299 U. S. 353, 365.)

These words have apt application to the present problem. If it be true, as H. R. 7595 seeks to declare, that our American institutions are threatened by advocacy of a totalitarianism alien to our traditions, we must meet the threat not by direct or indirect repression but by the

free political discussion which is the very cornerstone of democracy. And in this connection it is well to recall Mr. Justice Jackson's observation in the *Barnette* case that—

> freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. *Board of Education* v. *Barnette* (319 U. S. 624, 642).

Going to the substance of the bill, it has two major objectives. It imposes criminal sanctions for a large number of activities; it seeks to compel the registration of certain kinds of Communist organizations. Before considering the provisions of the bill in detail, we wish to point to two underlying aspects which in our opinion render most of its provisions unconstitutional: (1) the definitions of the bill, and (2) the fact that determination of the basic issue in regard to the character of the organization is left to the Subversive Activities Commission rather than to the courts.

There are two basic terms in the bill: "Communist political organization" (sec. 3 (3)) and "Communist-front organization" (sec. 3 (4)). Neither is defined with sufficient precision. It would appear also that a finding could be based on any one of the criteria set forth in section 14. That, of course, is the section that sets up the criteria for the Attorney General. In the case of "political" organizations, the criterion is control by a foreign government or political organization, plus operation "primarily to advance the objectives of the world Communist movement." Either criterion can be determined on the basis of a series of considerations set forth in section 14, many of them wholly unrelated and entirely lawful. Among those mentioned are the extent of nondeviation of its views and policies from those of foreign Communist governments and organizations and the extent to which the organization resists the efforts to obtain information with regard to its membership. Included are also matters more directly connected with control by a foreign government. I will go into a little more detail on that.

Mr. RUSSELL. In the last paragraph which you read, the ninth line, you used the word "lawful." Did you mean lawful or unlawful?

Mr. SIGAL. I mean lawful. That is a typographical error.

In the case of "front" organizations, the criterion is either control by a Communist political organization or a finding that the suspected "front" is primarily operated to give aid to a Communist political organization, a Communist foreign government, or the world Communist movement. Either of these criteria can be established on the basis of the identity of persons active in management, the sources or use of funds, and the positions taken by the organization on matters of policy.

We submit that such catch-all definitions transgress the requirements of certainty imposed by the due process clause and operate as a serious impairment of freedom of speech and association. (See *Winters* v. *New York*, 68 Sup. Ct. 665.) The case cited there is one of the latest cases on the subject, which held unconstitutional the criminal statute of New York.

Mr. WALTER. Is that New York or New Jersey?

Mr. SIGAL. I think it was New York. It is *Winters* v. *New York*. I am pretty sure it was New York.

The foregoing is rendered even more objectionable by the fact that the Government may be able to avoid offering proof before a judge and jury that the suspected organization comes within the category of the law. For the bill in its registration provisions (sec. 7) compels action by an organization designated as coming within the scope of the law by the Subversive Activities Commission under the administration provisions of section 14. Moreover, failure to register is then a crime (sec. 16). It is not clear whether it is criminal to fail to register before a formal designation is made. Membership in an organization that has not registered is then a crime (sec. 10). Use of the mails or instrumentalities of interstate commerce or of the radio is a crime unless accompanied by a statement that a Communist organization is responsible for the utterance (secs. 11 and 16 (c)).

Since it is contemplated that the Subversive Activities Commission will determine which organizations are within the scope of the law, the Government may contend in a prosecution under the law that it need only show failure to register, failure to label speeches or printed matter or continuance of membership, and that the order of the Subversive Activities Commission if upheld on appeal is conclusive. That is, the basic determination of fact as to whether the organization is one of the proscribed organizations is made administratively, without trial by jury, and all that is left to the jury for determination is whether or not there was failure to register. That, we submit, is in violation of the provisions of the sixth amendment, which guarantees trial by jury and a right of confrontation of witnesses. *Kirby* v. *United States* (174 U. S. 47).

Section 4 creates criminal penalties wholly independent of the two types of organizations we have been discussing. Any conspiracy or agreement to perform any act which would substantially facilitate or aid in the establishment of a "totalitarian dictatorship" is punished by a possible fine of $10,000 or imprisonment for 10 years, plus ineligibility for public office, provided the dictatorship is under the control of a foreign government or individual. Domestic efforts to produce totalitarianism are left untouched. The bill quite plainly is aimed at every effort in this direction and is not limited to acts of violence and to overt acts at all. For it expressly punishes an agreement to do any act which would substantially "facilitate or aid" the establishment of such a dictatorship. The last clause of this section contains the unusual provision that a prosecution under the act shall never be barred by limitations.

There is now a definition as such of what constitutes a "totalitarian dictatorship," lacking in last year's Mundt bill. But beyond that, it is quite clear that this provision on its face is not applicable to acts alone, but to speech and publication as well. It is hard to imagine phrases broader than those used as a method of criminal liability, except perhaps the phrase used last year, i. e., "in any manner." In *Winters* v. *New York*, the Court said:

> A statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void on its face. * * *

We think that language applies to section 4.

Lastly, in regard to the vagueness of this whole section, it would appear to us it would outlaw a proposal to amend the Constitution

to establish a totalitarian government. Under the provisions of the bill, force and violence are not required to make the act illegal. Section 4 prohibits any act which would substantially facilitate or aid in the establishment of a totalitarian government.

Suppose the time comes when the people want a totalitarian government and vote for it; that, clearly, would be illegal under the terms of this act. Language so vague and general, we submit, is certainly unconstitutional.

Registration is required by the act not only of Communist political organizations, but of the members of the organizations. Membership is not required to be given in regard to the Communist-front organizations.

Section 9 provides that the registration data is available for public inspection and that the Attorney General should annually submit to Congress a list of organizations and of the data given, including names of members.

We are of the opinion that these registration provisions, as well as the provision of section 11, which require the labeling of all material circulated by either of these organizations, are serious impairments of speech and association, and that they fall within the ban of the principles laid down in a host of Supreme Court decisions. We wish only to call specific attention to Judge Rutledge's statement in *Thomas* v. *Collins* (323 U. S. 516), where he said:

> As a matter of principle, a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and free assembly.

That case, you will recall, involved the act of Texas which required labor union organizers to register before they could perform their functions.

Permeating the bill are two concepts, the unconstitutionality of which cannot be doubted.

First, the proposed bill imposes disabilities merely on the basis of organizational affiliation and not on the basis of personal illegal acts.

In recent years, no doctrine has been more bitterly attacked than the several legislative and executive attempts to impose guilt by association. Perhaps one of the most eloquent books on freedom of speech is that of Prof. Zechariah Chafee, Jr., Free Speech in the United States (1941), which poignantly illustrates the dangers and absurdities of the doctrine (pp. 470–484).

Under section 10, a member of a "Communist political organization" may go to jail for 5 years merely for belonging to such a group if it has not registerd. The default of the organization in failing to comply with the law is imputed to each member, thereby resulting in the commission of a separate crime by each member for further adherence to the organization. As Mr. Justice Jackson stated in the Korematsu case, "* * * If any fundamental assumption underlies our system, it is that guilt is personal * * *" (*Korematsu* v. *U. S.*, 323 U. S. 214). Section 10 is therefore unconstitutional. (See Mr. Justice Murphy in *Bridges* v. *Wixon*, 326 U. S. 135).

A bill of attainder, as this committee knows, is defined as a legislative act which inflicts punishment without a judicial trial. The present bill constitutes a congressional determination that in effect all members of a "Communist political organization" are automatically

subjected to certain penalties merely by the fact of membership. The bill by the registration provisions removes the right of privacy from them. They may not obtain or seek privileges, such as passports or Federal jobs, to which other persons are eligible. It is hard to see a distinction between a statute prescribing certain oaths as a condition to practice law in the Federal courts and a statute such as the one under consideration. As you recall, in the case of *Cummings* v. *Mo.* (4 Wall. 277), the former type of statute was held unconstitutional. If the Supreme Court has ruled the former unconstitutional because of some presumption of guilt which would be the basis for the denial of the privilege, then the latter, which does not merely presume guilt but finds it conclusively, must also fall. And one of the latest cases on the subject of bill of attainder is *United States* v. *Lovett* (328 U. S. 303, 315, 317).

The statement is frequently made that this bill is not a bill of attainder because it does not by name mention the Communist Party. I think it is impossible to read the legislative history of the act so far without knowing that it is the Communist Party which is definitely meant to be defined by this act, and if it is not the Communist Party, it certainly would be interesting to know what is meant or is intended by the definitions and the provisions of this act. We think specifically not naming the Communist Party does not save this act from being a bill of attainder, because all the history behind it shows that what are generally taken to be the activities of the Communist Party are set forth in the act.

Any registration required by the Attorney General of a Communist political organization because of its views and policies (sec. 14 (e) (1)) or because of the alleged identity of its views with a foreign government or organization (sec. 14 (e) (2)) would seem to be a clear violation of the constitutional principle against prior restraints on beliefs or opinions.

There would seem to be great doubt whether organizations may be subject to special treatment by law because of views alone. Certainly, it would not be maintained that a statute subjecting an organization to criminal penalties merely because of its beliefs, in the absence of any acts on its part, would be constitutional. See *De Jonge* v. *Oregon*, supra; *Taylor* v. *Mississippi* (318 U. S. 583). Registration which is akin to licensing would similarly seem to fall within the constitutional ban. See various Johovah's Witnesses leaflet cases, e. g., *Lovell* v. *Griffin* (303 U. S. 444); *Schneider* v. *Irvington* (308 U. S. 147); and *Murdock* v. *Pennsylvania* (319 U. S. 105).

I have touched on only a few of the many questions that can be raised, and I am sure the committee has had various details mentioned to it. I would like to close this formal statement by quoting the opening paragraph of the minority views of the Senate Judiciary Committee on the very bill which is before this committee:

> This bill, if enacted, would constitute the greatest threat to American civil liberties since the alien and sedition laws of 1798. Like that bill, it is the product of hysteria and frantic, unthinking fear. Like that bill, it would strike at the very foundations of our democratic institutions—the right of the people to speak their minds, to hear every viewpoint on public questions, and to associate together freely to advance their common views. Like that bill, it merits the opposition of all who cherish liberty.

Mr. MOULDER. From what document is that quotation?

Mr. SIGAL. From the minority views of the Senate Judiciary Committee on S. 2311.

Mr. WOOD. Any questions? Mr. Walter?

Mr. WALTER. No. questions.

Mr. WOOD. Mr. Harrison?

Mr. HARRISON. No.

Mr. WOOD. Mr. Moulder?

Mr. MOULDER. No.

Mr. WOOD. The committee is very appreciative of your presence here, Mr. Sigal, and this statement that you have read to us. Mr. Russell, have you any further questions?

Mr. RUSSELL. No questions.

Mr. WOOD. Unless you have something further to offer, you may be excused.

Mr. SIGAL. No, I have nothing further. I will be happy to answer any questions. Thank you.

Mr. RUSSELL. Mr. Chairman, Mr. Arthur Garfield Hays was scheduled to appear, but I understand his plane is late. I don't know what time he will arrive. We understood his plane would arrive at 11.

Mr. WOOD. The committee will stand at recess subject to the call of the Chair.

(Short recess.)

AFTER RECESS

Mr. WOOD. The committee will be in order.

Mr. RUSSELL. Mr. Hays.

Mr. WOOD. Will you hold up your right hand and be sworn, please. You solemnly swear the evidence you give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAYS. I do.

Mr. WOOD. Have a seat, sir.

Mr. HAYS. I wish to apologize for being late, but my plane didn't get off on time.

Mr. WOOD. We understood it wasn't your fault, sir.

Mr. HAYS. Thank you.

TESTIMONY OF ARTHUR GARFIELD HAYS

Mr. RUSSELL. Will you state your full name, please?

Mr. HAYS. Arthur Garfield Hays.

Mr. RUSSELL. You are appearing here as a representative of the American Civil Liberties Union; are you not?

Mr. HAYS. I am.

Mr. RUSSELL. Mr. Hays, what position do you hold with the American Civil Liberties Union?

Mr. HAYS. I am general counsel of the American Civil Liberties Union, associated with Morris Ernst, who is also general counsel, and I am also a member of the board of directors of the Civil Liberties Union.

Mr. RUSSELL. Mr. Hays, it has been the policy of this committee to ask witnesses testifying concerning proposed legislation whether or not they are at the present time a member of the Communist Party

or whether they have been at any time a member of the Communist Party. I would like to ask you that question.

Mr. HAYS. My answer is "No." That is a curious question to ask one who has devoted his life to fighting totalitarian government.

Mr. RUSSELL. There is a reason. I will not explain it now.

Do you have a prepared statement?

Mr. HAYS. I have, but I would like to read only the conclusion.

Mr. RUSSELL. Mr. Chairman, I ask that Mr. Hays be permitted to read such parts of his statement as he desires, and that the rest be placed in the record.

Mr. WOOD. If Mr. Hays wants it placed in the record.

Mr. HAYS. Yes. The main part has to do with the law and an analysis of the bill, and I imagine you are tired hearing that by now, so I would like to devote myself to the philosophy of the whole thing.

Mr. WOOD. You may proceed, and the statement in its entirety will be included in the record.

(The statement above referred to is as follows:)

My name is Arthur Garfield Hays. I am general counsel of the American Civil Liberties Union, and a member of its board of directors. I am appearing here today in behalf of the American Civil Liberties Union in opposition to Mr. Nixon's bill, H. R. 7595.

The American Civil Liberties Union is completely and unalterably opposed to communism. We are equally opposed to any violation of the civil liberties guaranteed in our Constitution—freedom of speech, due process, and all the other great foundations of our democracy. It would be tragic if we were to deprive ourselves of those civil liberties which distinguish our political system from totalitarianism in a misguided effort to combat that totalitarianism. We believe that H. R. 7595 represents an unconstitutional violation of those civil liberties. We believe, moreover, that contrary to its claimed effect, its passage would materially aid the cause of communism, undermining that very structure of the American Government and the American society which it ostensibly is meant to buttress.

There are already adequate laws now on the statute books to combat any "clear and present danger" from communism, which is all the proponents of this bill seek to safeguard against. Among these are the Espionage Act, operative only in time of war (50 U. S. C. A. 33), the Peacetime Sedition Act (18 U. S. C. A., secs. 9–13), the Subversive Organizations Registration Act (18 U. S. C. A., secs. 14–17), and the Foreign Agents Registration Act (22 U. S. C. A., secs. 611–621).

While we are strenuously opposed to the views of those who would be immediately affected by H. R. 7595, we must recognize the perils to which legislation of this type would expose the whole Nation.

Today, Communists are condemned as un-American because their motives are suspected; and so, if H. R. 7595 were to become law, those who furthered the Communists' program would be penalized. What of tomorrow? May the Congress of some future day conclude that other political faiths are equally "un-American" and "subversive" and must, therefore, be subjected to restraints and penalties? Will it be the Progressive Party tomorrow? The Socialist Party next week? And then the Democrats? And then the Republicans? Can we safely accept the proposition that the advocacy of ideas may be forbidden, without reference to specific acts of a criminal nature? We think that our whole constitutional development shows that actions, not beliefs or ultimate goals, must be the sole tests of legality.

Chief Justice Hughes declared a decade ago: "The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government" (*De Jonge* v. *Oregon*, 299 U. S. 353, 365). These words have apt application to the present problem. If

it be true, as H. R. 7595 seeks to declare, that our American institutions are threatened by advocacy of a totalitarianism alien to our traditions, we must meet the threat not by direct or indirect repression but by "free political discussion" which is the very cornerstone of democracy. And in this connection it is well to recall Mr. Justice Jackson's observation that "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order" (*West Virginia State Board* v. *Barnette*, 319 U. S. 624, 642).

Analysis of the Bill

After declaring a necessity for this legislation (sec. 2), and defininining certain terms (sec. 3), the most important of which are "Communist political organization" (subsec. 3) and "Communist-front organization" (subsec. 4), the bill makes certain provisions against "sedition" (sec. 4); and then provides for the registration of all organizations of the type listed above, and imposes certain penalties upon members and officers of such organizations. These latter provisions will be referred to henceforth as the "registration and penalization" provisions, as distinguished from the "sedition" provisions, which will be discussed first.

A. THE "SEDITION" PROVISIONS

Section 4 creates criminal penalties entirely independent of any organizational registration or nonregistration. It provides in subsection (a) that "It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by or under the denomination or control of, any foreign government, foreign organization, or foreign individual." This is punishable by a possible fine of $10,000 or imprisonment for 10 years, or both, plus ineligibility for public office.

It should be noted that strictly domestic efforts to establish totalitarianism are left untouched.

There is a definition of what constitutes a "totalitarian dictatorship." Beyond this, all is confusion. The language of subsection (a) is so vague that one would not know with any certainty what actions would subject one to criminal liability. What exactly is prohibited in the injunction against "knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment * * * of a totalitarian dictatorship"? It should be noted that there is not even a requirement that the person accused intends to bring about the forbidden result; it is enough if the agreement to perform some act is a conscious one.

Just what does this catch-all prohibit? It is quite clear that this provision on its face is not applicable to acts alone, but to speech and publication as well. The avowed purpose of the Nixon bill is to prevent the establishment of a totalitarian dictatorship. If the bill becomes law, and a person advocates its repeal, is he then performing an "act which would substantially contribute to the establishment * * * of a totalitarian dictatorship"?

Is an attorney who defends a Communist in a political case guilty under this section? If a group files a brief amicus in the appeal of the Communist leaders from their conviction under the Smith Act and helps secure its reversal, is this a criminal conspiracy? Is a person who contributes to the defense funds of the Communists a criminal under this subsection? Is publication of a pamphlet proposing peaceful and legal amendment of the Constitution to establish a "totalitarian dictatorship" outlawed? If Mrs. Roosevelt again invites Paul Robeson to appear on her television program, is she to be indictable under this section? Do the publishers of the Daily Worker publish at their peril? Is it criminal to publish Das Kapital or to put it in a library? Where is the line to be drawn?

We believe this section to be clearly unconstitutional on its face. As the United States Supreme Court stated in the case of *Winters* v. *New York* (333 U. S. 196): "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained (*Herndon* v. *Lowery*, 301 U. S. 242, 259)." It should also be noted that the court in the *Winters* case cited as authority the case of *State* v. *Diamond* (27 N. W. 477, 202 P. 988), which held unconstitutional a statute punishing "any act of any kind whatsoever which has for its purposes or aim the destruction of organized government * * * or to do or cause to

be done any act which is antagonistic to or in opposition to such organized government * * *." The language of that statute was remarkably similar to section 4 (a) of H. R. 7595. (See also *Stromberg* v. *California*, 283 U. S. 359, 369.)

B. THE "REGISTRATION AND PENALIZATION" PROVISIONS

1. *In general.*—The proponents of the bill have frequently contended that the purpose of the registration provisions of the bill is mere disclosure. This is demonstrably untrue. For registration of a "Communist political organization" automatically bars its members from seeking passports or holding Federal employment; registration of a "Communist-front organization" automatically requires it to label all its publications moving in interstate commerce and all its radio broadcasts as those of "a Communist organization," a requirement applicable as well to the propaganda of "Communist political organizations." Moreover, adequate laws already exist providing for mere registration. (See p. 2.)

Registration will not disclose to the public or to the Government anything they do not already know. There is no doubt but that the FBI and the House Committee on Un-American Activities already have all information which could possibly be obtained by registration; and Communists and communism have repeatedly been exposed by governmental authorities and in the press. Moreover, Communists have already announced that they would not comply with the provisions of this bill. As Senator Mundt has stated:

"I don't believe that all the Communists in America are going to register simply because the law says that they should, and I think that we're still going to need the FBI, still going to need the House Committee on Un-American Activities and a great number of other alert people to find the people who decline to register" (from "Meet the Press," Station WOR, Mutual Broadcasting System, March 17, 1950, 9:30–10 p. m., e. s. t.).

In their noncompliance, Communists will inevitably increase their underground activities. It is not enough to answer that the most dangerous parts of the Communist "apparatus" are already underground. Ninety percent of an iceberg is invisible, too; but sailing in dangerous waters would not be made safer were the entire iceberg to be unseen. Moreover, while the argument that a law will not be complied with is normally not a valid argument against its enactment, the fact that a bill whose avowed purpose is disclosure will paradoxically result in an attempt at complete concealment would seem persuasive evidence that the bill would do more harm than good were it to become law.

If indeed the time has come for disclosure, assuming that this law would become effective, it would seem far better to require all organizations seeking to influence public opinion to disclose, than to single out merely the Communist groups. Our way of life is quite possibly now threatened more seriously by the Ku Klux Klan than by the Communist Party, yet this and native Fascist groups are exempt from registration. Indeed, any registration required by the Attorney General of a Communist political organization because of its views and policies (sec. 14 (e) (1)) or because of the alleged identity of its views with a foreign government or organization (sec. 14 (e) (2)) would seem to be a clear violation of the constitutional principle against prior restraints on beliefs or opinions.

There would seem to be great doubt whether organizations may be subject to special treatment by law because of views alone. Certainly, it would not be maintained that a statute subjecting an organization to criminal penalties merely because of its beliefs, in the absence of any acts on its part, would be constitutional. (See *De Jonge* v. *Oregon*, supra; *Taylor* v. *Mississippi*, 319 U. S. 583.) Registration which is akin to licensing would similarly seem to fall within the constitutional ban. (See various Jehovah's Witnesses leaflet cases; e. g., *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *Irvington*, 308 U. S. 147; and *Murdock* v. *Pennsylvania*, 319 U. S. 105.)

Proposals for disclosure may be sustained where related to some Federal function, such as special postal rates or identification of foreign agents. But in no law covering such cases have specific groups or organizations easily identified been singled out for special treatment. This, we believe, is not only sound public policy but good constitutional law.

Moreover, the imposition of penalties for nonregistration by legislation rather than by judicial trial would be an unconstitutional bill of attainder. A bill of attainder is defined as a legislative act which inflicts punishment without a judicial trial (*Cummings* v. *Missouri*, 4 Wall, 277). The present bill constitutes a congressional determination that in effect all members of a "Com-

munist political organization" are automatically subjected to certain penalties merely by the fact of membership. The bill, by the registration provisions, removes the right of privacy from them. They may not obtain or seek privileges, such as pasports or Federal jobs, to which other persons are eligible. It is hard to see a distinction between a statute prescribing certain oaths as a condition to practice law in the Federal courts and a statute such as the one under consideration. If the Supreme Court has ruled the former unconstitutional because of some presumption of guilt which would be the basis for the denial of the privilege, then the latter, which does not merely presume guilt but finds it conclusively, must also fall. (*Cummings* v. *Missouri*, supra; *Ex Parte Garland*, 4 Wall. 333; and see, as particularly in point, *United States* v. *Lovett*, 328 U. S. 303, 315, 317.)

We do not doubt, furthermore, that while Congress may define conspiracy it is the responsibility of the courts alone to decide what groups fall within the definition. The definition of a "Communist political organization" is an ill-disguised method to define the Communist Party as an international conspiracy. The use of the term "Communist" brings the statute within the Lovett case's dictum that "legislative acts, no matter what their form, that apply to named individuals or to *easily ascertainable members of a group* * * * are bills of attainder" (*United States* v. *Lovett*, supra, 315). [Italics added.]

2. *In detail.*—(*a*) Definitions of organizations required to register: There are two basic terms in the bill—"Communist political organization" (sec. 3 (3)) and "Communist-front organization" (sec. 3 (4)). The first is obviously aimed at the Communist Party. But neither is defined with sufficient precision. Moreover, it would appear that a finding could be based on any one or more of criteria set forth in section 14, many of them wholly unrelated and entirely lawful.

(i) A "Communist political organization" is defined in section 3 (3) as an organization which is controlled by a foreign government or foreign political organization, and which is operated "primarily to advance the objectives of * * * (the) world Communist movement." But section 14 (e), in addition to setting forth certain relevant considerations, sets forth additional considerations upon which such findings may be predicated, including the extent of nondeviation of its views and policies from those of foreign Communist governments or organizations and the extent to which the organization and its members operate in secrecy and resist efforts to obtain information as to their membership. This last criterion in effect permits a finding that an organization is a Communist political organization when such organization claims it is not and therefore resists its registration. Protestations of innocence are thus turned into admissions of guilt.

(ii) A "Communist-front organization" is defined in section 3 (4) as an organization which is controlled by a "Communist political organization" or primarily operated to give aid and support to a "Communist political organization," a Communist foreign government, or the "world Communist movement." But, under section 14 (f), either of these criteria can be established on the basis of the identity of persons active in management, the sources or use of funds and the positions taken by the organizations on matters of policy. This last provision in effect might permit characterization of an organization as Communist merely because some of its views coincide with Communist policy, though the group may indeed have no sympathies with communism whatsoever.

(iii) We submit that any such definitions must inevitably restrict freedom of speech and assembly of the organization and its members, in violation of the first amendment to the United States Constitution, by limiting their rights to meet in private and their right to take what position they choose on national or international matters, unless they register and submit to the penalties appertaining to registration. Even registration without penalty would be unconstitutional. We wish to call specific attention to the Supreme Court's ruling in *Thomas* v. *Collins* (323 U. S. 516), where it was held that "As a matter of principle, a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and assembly." In addition, such catch-all definitions transgress the requirements of certainty imposed by the due-process clause of the fifth amendment. (See *Winters* v. *New York* (333 U. S. 196).)

(*b*) Administrative procedures: Section 7 of the bill requires registration with the Attorney General within 10 days after its enactment or within 30 days after an organization acquires its Communist character. A member of an organization who knows it to be registered as a Communist political organization and who

knows that he is not listed as a member by the organization must within 60 days thereafter register as such with the Attorney General (sec. 8). If the Attorney General has reason to believe that a nonregistered organization or individual should have registered, he brings proceedings before the Subversive Activities Control Board appointed by the President (sec. 13) for a determination of this question. The Board holds public hearings (sec. 4 (d)) and may require attendance of witnesses and production of relevant documentary evidence any place within the United States (sec. 14 (c)). This would seem to be an undue burden upon witnesses who might have to travel cross-country. The Board then makes appropriate findings and orders (sec. 14). Provision is made for proceeding for cancellation of registration if an organization claims it is entitled to same (ibid.). An organization or individual must register within 30 days after the order becomes final (sec. 7 (c) (3) and (10)). Membership thereafter in an organization which has failed to register is a crime (sec. 10).

(*c*) Judicial review: Section 15 allows judicial review by the Court of Appeals of the District of Columbia with final review by the United States Supreme Court. The findings of the Board are to be conclusive if supported by the preponderance of the evidence.

Since it is contemplated that the Subversive Activities Control Board will determine which organizations are within the scope of the law, the Government may contend in a prosecution under the law that it need only show failure to register, failure to label speeches or printed matter or continuance of membership, and that the order of the Subversive Activities Control Board if upheld on appeal is conclusive. That, we submit, is in violation of the provisions of the sixth amendment which guarantees trial by jury and a right of confrontation of witnesses (*Kirby* v. *United States*, 174 U. S. 47).

(*d*) Contents of registration statement: The registration requirements of section 7 require the annual listing of officers and an accounting of receipts and activities with a statement of the sources of funds. The Attorney General is authorized to specify the details. These are required of both types of organizations. "Political" but not the "front" organizations must also list annually the names and addresses of members. The Attorney General is required to notify any individual listed as a member, who is given an opportunity to contest his listing before the Attorney General with right of appeal to the Board.

Section 9 provides that the registration data is available for public inspection and that the Attorney General should annually submit to Congress a list of organizations and of the data given, including names of members.

(*e*) Penalties—(i) criminal: Membership in a nonregistered organization is made unlawful 30 days after the Board's final order requiring registration (section 10). The default of the organization in failing to comply with the law is thus imputed to each member, thereby resulting in the commission of a separate crime by each member for further adherence to the organization. As Mr. Justice Jackson stated, "* * * if any fundamental assumption underlies our system, it is that guilt is personal * * *" (*Korematsu* v. *U. S.* 323 U. S. 214). Section 10 is therefore unconstitutional. (See Mr. Justice Murphy in *Bridges* v. *Wixon*, 326 U. S. 135.)

An organization which has failed to register pursuant to section 7 is liable to a fine of between $2,000 and $5,000. Those individuals who had the duty to register for the organization and an individual who failed to register pursuant to section 8 are liable to the same fine plus imprisonment for 2 to 5 years. Each day of failure to register is a separate offense. Thus, organizations not registering could be fined as much as $1,725,000 per year, and individuals who are punishable for this offense could be made to stand the penalty of life imprisonment. False statements in registration statements are punishable just as severely.

(ii) Other noncriminal penalties: Though nonregistered organizations are subject to the penalties listed directly above, registered organizations and their members are subject to other penalties. Both compliance and noncompliance with the law thus paradoxically subject persons and organizations to penalties.

(*a*) Denial of tax deductions and exemptions: Registered organizations and those who have not registered though finally ordered to by the Board are denied exemption from Federal income tax, under section 101 of the Internal Revenue Code, and contributors thereto cannot take a deduction (sec. 12).

(*b*) Nonavailability of Federal employment: Section 5 makes it unlawful for a member of a "Communist political organization" when there is in effect a final order requiring it to register or when it is registered, to hold any nonelective office or employment under the United States. In addition, anyone who employs

such an individual in that capacity with knowledge that he is a member of such an organization is guilty of a crime.

We submit that the loyalty program has adequately protected the Government against Communist infiltration. Not only is this provision therefore absolutely unnecessary, but it also imposes disability merely on the basis of organizational affiliation and not on the basis of personal illegal acts. We have consistently opposed the blanket proscription of persons from government service merely because of their affiliations. They may be totally out of sympathy with the subversive policies of that organization, or may have joined because of personal reasons. We find no justice in the broad scope of this bill whatever may be the question of its constitutionality.

(*c*) Denial of passports: Section 6 makes it criminal for a member of such an organization described in (*b*) immediately above even to apply for a passport. If a Government officer or employee merely has reason to believe that the applicant is such a member he is guilty of a crime if he issues the passport. Thus, mere suspicion is made a ground for denial of the privilege.

Moreover, we have always been of the opinion that there should be as few restrictions as possible on travel both into and out of the United States. We see no justification for the restrictions here imposed.

(*d*) "Red label" requirement: Under section 11, it is unlawful for a registered organization or for an organization finally ordered to register or for any person acting in its behalf to use the mails or other means of interstate commerce to distribute literature without printing on the wrapper that it is "Disseminated by ———, a Communist organization." So, too, a broadcast or telecast must be preceded by a statement that "The following program is sponsored by ———, a Communist organization." Pause for station identification is now replaced by pause for ideological identification. There would thus seem to be a double violation of the rule against prior restraints. Cf. the Collins case, mentioned on page 10 of this memorandum, which we believe correctly states the law.

Moreover, this provision would have the inevitable effect of smearing any good cause the Communists might espouse in the minds of those who judge ideas, not on the basis of validity, but on their source. On the other hand, Communists would be careful to embark publicly on only the worthiest crusades and those who judge ideas by their validity will then ascribe all good causes the Communists may espouse, to the Communists. Whatever the result, only the Communists will gain.

(The last part of the foregoing statement, headed "Conclusions," was read by Mr. Hays, as follows:)

Communism and all its works were never at a lower ebb in the American mind than they are today. No group, except the Nazis, has ever been so scorned and reviled by the general public. This has happened without any such law as H. R. 7595 proposes.

Its enactment would inevitably boomerang. Communists will be driven completely underground where it will be more difficult to combat them. The only important fear which we need have of Communists in this country today is that they will provoke us into suicide, by destruction of our own free activities.

May I insert a statement I have often made, that I think the Communists are dangerous in the United States today, but not for the accepted reason. I think they are dangerous, not for what they might do, but for what they might persuade us to do.

Judgment as well as emotion must be used in combating our enemies; it does one little good to attempt to crush his enemy below by jumping out of a tall building in the hope he will score a direct hit.

Our supreme interest in defeating this bill is self-interest—the self-interest of all of us Americans who are not Communists but are, on the other hand, uncompromising opponents of all totalitarian dictatorship. It must be remembered that it was Czarist Russia in which repressive measures were first taken against Communists—and that it was Czarist Russia in which communism scored its first victory. Police-state tactics will not destroy communism. Only counterpropaganda and more democracy will. By refusing to adopt this bill, America will strike the heaviest possible blow against communism, and preserve its own democracy.

Mr. HAYS. Mr. Chairman, in discussing the philosophy of this bill I am much more interested in non-Communists than I am in Commu-

nists; the effect it has on society in general rather than the effect it has on the Communist. I myself am not fearful of the Communists themselves. I think they have been tremendously publicized, and that helps popularize the movement. It has an emotional appeal which has been well advertised. I think that arouses the emotions that keep people in the party.

Mr. Wood. Mr. Hays, pardon me for interrupting. I understood you, in your opening remarks, to say communism today is at the lowest ebb it has been in years.

Mr. Hays. I am of the opinion in 1920 it was more popular than it is today because it had the sympathies of people who were half Socialist and thought it might be interesting to see how it developed. Since then, everybody knows it is a purely totalitarian slave government, so I don't think it has the sympathetic support of the people that it had then.

I know some of my friends who were liberals gave it their sympathetic support. I don't think it was so much of a reflection on a man to be a Communist in those days as it has been, I would say, since the German-Russian pact, and as it is today. So I think whatever influence they may have had in the beginning has been greatly lessened as time has gone on.

I think further it is not only the unpopularity of the people who belong to the party; it has come to be a question of freedom. We had Communists on our board until 1940. Since 1940 no one has been permitted to be on the board unless he will commit himself as being opposed to totalitarian government. Those Communists were fighting for civil liberties, but we found if we were to be effective we should have no one on the board unless he would reject anything connected with totalitarian government.

Mr. Walter. Don't you think that is due to the fact the people have come to a realization of the Communist system?

Mr. Hays. Partly, and I think we all agree in time of war Communists would form a fifth column, but I don't know of any law that can be passed that would punish people for the views they hold and for what might happen in the future.

The Communists can't get enough support in New York, where they are strongest, to keep their name on the ballot. They did in 1920. They have no one in the legislature, and no one in the Senate and House with one possible exception.

Why this fear? Entirely aside from that, it is the effect of bills of this kind on non-Communists that concerns me. For instance, under this bill the Communist Party is obliged to register the names of members of the party. Now, then, I haven't as much confidence in those who are in the Communist Party as perhaps your committee. I think they would do anything to promote their cause, whether it is good, bad, indifferent, or vicious. What if the Communists filed a lot of names of people who are not Communists? They could put on their list every labor-union leader in the United States. They might put Dean Acheson on their list. Then you have long proceedings to find out if the people on their list are Communists. What is to prevent that sort of thing? Are the Communists too honest to do that? It would be wise strategy on their part. Suppose they put some workingman on their list who is not a Communist, but who has no money to fight it? What effect might it have on people strongly

opposed to communism if the Communists wanted to make use of this strategy?

Take members of your Subversive Activities Control Board. These men, appointed at $12,500 per year with no other business, would probably have the greatest power of judgment than any three men in the United States. We all assume they would be honest, disinterested men. Might I suggest the names of Dies, Thomas, and McCarthy—being in the Senate McCarthy probably wouldn't take it—or perhaps Mr. Rankin might be a substitute. Imagine a board like that, with very definite views, full of suspicions, determining whether a person is a Communist or not.

In reading this bill, I should say the Progressive Party would have to register under section 14 (e). I have no brief for the Progressive Party, but I think it is a pretty dangerous situation where the judgment might apply to many people who are not Communists. Take section 14 (e). Among the criteria by which one is to determine whether a group is a "Communist political organization" are the following:

(1) The extent to which its policies are formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign governmental or political organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 of this act.

I don't know of any point in foreign policy that was espoused by Russia that was opposed by the Progressive Party. I may be wrong, but I think they followed the party line very closely, not intentionally, but I think their views were that way. Yet I don't doubt the patriotism of a large part of the Progressive Party.

Take subsection (2):

the extent to which its views and policies do not deviate from those of such foreign government or foreign organization.

I don't think their foreign policy deviated from the party line, in spite of Mr. Wallace's insistence that he was opposed to totalitarianism.

Take subsection (7):

The extent to which (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis.

Well, I am sure that is true in various parts of the country where people are fearful of being called Communists.

Take section 14 (f). Among the criteria by which the Board is to determine whether any organization is a "Communist-front organization" are the following:

(1) The extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist political organization * * *.

I think one of the troubles with the Wallace movement was they got in the hands of the Communist Party after a while, although I think they started independently.

(2) The extent to which its support, financial or otherwise, is derived from any Communist political organization * * *.

Suppose the Communist Party contributed the campaign funds; that would be a criterion for determining the Progressive Party is a "Communist-front organization."

(3) The extent to which its funds, resources, or personnel are used to further or promote the political objectives of any Communist political organization * * *.

The same there.

(4) The extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist political organization * * *.

How about that?

I think if a thoroughly honest, sincere man was on the Board he would probably say the Progressive Party had to register. Suppose they didn't register. In the first place, they wouldn't know the names of their members; I presume they wouldn't. I know of no political party that does know the names of its members except the actual Communist Party. They don't know the names of the members so they can't register. But suppose they try, and send in as many names as they can. Everything they do has to be denominated as a Communist proposal. Suppose they don't register. They take the chance of being found to be a Communist political organization and somebody being fined thousands of dollars a day for failure to register.

You would destroy any new minority party if it espoused things you didn't like or if you thought it was affiliated with the Communist Party. And you would leave the determination to three men.

I am trying to avoid any legal discussion, but I tell you it is wrong. If I were asked today what is the greatest threat to liberty, I would say this: That in past times any law that was not so definite that anybody could understand it was unconstitutional. Today I think all along the line we are beginning to pass indefinite laws. In the past we had judgment by courts after an Anglo-Saxon trial. Now we have judgment by commissions. This country is developing into a state where we have indefinite laws with judgments by commissions. I think that is the greatest threat to the country, and I know of no better example than this law.

Mr. MOULDER. Mr. Chairman.

Mr. WOOD. Mr. Moulder.

Mr. MOULDER. Then is it your contention and argument that the ultra-conservative groups, which were referred to by President Roosevelt as "economic royalists," are using fright psychology by adopting "communism" as a scare word to frighten the people, in their efforts to oppose liberal legislation?

Mr. HAYS. I haven't any question about that. I should think we might learn from Hitler and Mussolini, the means by which they rose to power, and when they got in power they fastened a real menace on the people. I have too much confidence in the American people to believe anybody in the United States can bring that about.

Mr. WALTER. If a political organization should adopt the labor platform in toto and advocate that type of nationalism for certain industries in the United States, don't you feel under the provisions of this law that group would be considered subversive?

Mr. HAYS. I have no doubt of it. You might have a group so afraid of communism they would adopt anything new. I have often stated, under the Feinberg law in New York relating to teachers, if a teacher wanted to keep her job I could tell her what to do. If a teacher says, "War with Russia is inevitable; we should drop bombs on her tomorrow," she would be considered anti-Communist. She also ought to support the Marshall plan. She ought to support the Allies together.

My feeling is that bills of that kind are making Americans timid. I think it is more important to have courageous citizens say what they think, rather than people afraid of expressing themselves.

I am against all disclosure laws, incidentally. I think that would practically end liberty. A thing like that would have killed the abolition movement in the early days. When, in addition to the general disclosure law, you have penalties on those that disclose themselves, you are making people timid of any connection.

I don't believe you could get a group of men in Washington today who would discuss any political question honestly that is controversial. They are hush-hush affairs. No man will express himself in a group of friends where he might be called a Communist, right or wrong. I know many people who are patriotic who belong to many front organizations. As one man said: "I walk the road I think is right, and I don't get off because other people get on."

I personally have never belonged to a front organization, but I have been asked to join such and such organization and I would ask who were on the Board, and perhaps they would say Roger Baldwin and Norman Thomas, and I would say all right, then pretty soon they would have other names on it. It might be a front. I have learned that and do not join, but many of their purposes I have strongly approved of from time to time. Why any person should have his character assailed because of associations or views is beyond my comprehension. You are making people timid. I am a little timid myself. I subscribed to that Trenton Six trial. When I wrote out my check to the Civil Rights Congress I wondered if I should pay in cash. I have a good law practice, but a man in my position, even, has that thought. Just think how timid most men, depending on their jobs or positions, must be.

I don't know whether the Wallace Party would come under that law. If the Civil Liberties Union asked for the repeal of this law, I don't know whether we might be held as doing something in the interest of a foreign totalitarian government.

> It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government.

Suppose one proposed the repeal of this law if it were passed; is he contributing to this movement that would promote the establishment of a totalitarian dictatorship? I don't know; neither does anyone else.

I notice in the report of the majority of the committee the statement was made they did not want to ban the Communist Party, and they gave as reasons it might drive them underground, and that in Canada it didn't work, they merely changed the name.

Some people are for the bill because it does drive the Communist Party out; some are in favor of it because it does not.

If you examine the Stassen-Dewey bill, Stassen was for it because it banned the Communist Party; Dewey was for it because it did not ban the Communist Party.

How can you conceive of any political group getting along if they have to take the penalties provided in this bill?

People of course will quit the party. It certainly will drive the party underground. In Ireland they banned the party under Parnell and others, and it would come up under another name.

At the beginning of the Communist Party they used to threaten direct action in the United States instead of political action, and we liberals thought the thing for America to do was develop a political action, because so long as you have the right to vote by secret ballot you have nothing to fear, but when you lose that you have lost the basic right of democracy.

Take the leftist propaganda we have heard for years. Now we are practically preventing them from engaging in political action.

If the committee does not feel it would be wise to ban the Communist Party, I can't conceive why the committee should be in favor of this bill, because it does the very thing the committee said would be unwise.

I mentioned the effect the bill would have on those who are not Communists, by citing the Progressive Party and what the Communist Party could do by making false lists. There are perhaps 70,000 Communists in the United States, as fixed, I think, by Hoover; and Professor Chafee pointed out that is one-twentieth of 1 percent. It is like being in a ball park with 40,000 people, and 20 are Communists. Are we so weak that we need to fear those 20?

There are plenty laws that penalize actions that are subversive or dangerous or violent. I have often said that the leftist party is always the target in the United States, and I imagine in any country. To me it is a good thing for society, because I think it is a good thing to have a gadfly to continually pick on us.

I was surprised to find that the first plank in our party platform was a public school system. The second was abolition of inheritance. The third was income tax; and the fourth was reforestation. While each of those things at one time was considered radical, under the democratic system when they suit your needs you adopt them.

In 1924, in the La Follette campaign, of which I was chairman in New York, we were the Reds. When Roosevelt came in, we were way behind the bandwagon compared to 1924.

The Communists made the Socialists respectable, and sometime we will have a more radical party than the Communist Party that will make the Communist Party conservative.

There are a few people in this country associated with a country that is a danger to the United States. I think what is attempted to be done by this bill is like burning books. I would prefer having them carrying on their activities in the open. It would enable them to let off steam. It stops fear and hate and all the social vices that come along when people are afraid. It shows you where people stand. I like the old American doctrine: "Let them talk. This is a free country, ain't it?"

Usually if you let those people talk they put out enough rope to hang themselves.

Why this lack of confidence in the American people? After all, the Communists aren't getting anywhere in this country. Nothing arouses my indignation more than when I am told the Communists are to be credited with all the hell-raising in this country. You would think the Communists can lead thousands of workingmen by their noses. I don't think they are entitled to the credit they are getting.

You would think a Communist teacher can infiltrate the school children.

Who gives them that credit? I don't know anybody who gives it to them except the Communists and reactionaries. The American people have always had guts. They have always raised cain.

In a country like ours the people can be trusted, and they have demonstrated this throughout history. Look at the alien and sedition acts. Look at the anti-Catholic acts. Remember the Knights of Labor, then the A. F. of L., then the IWW's, then the Socialists. The Communist situation today is just like the Socialists of the twenties. The Socialists were defended by Charles E. Hughes. Then came the CIO. They were controlling this country. And in accordance with our democratic traditions the CIO started doing away with Communists. Today we are against Communists because we are fearful of trouble with Russia. Are they entitled to all the credit we give them?

I have known most of these men. I have known Browder and Bob Minor. They are a very confused crowd of men. I often wonder at the credit we give them. They haven't gotten to first base. Yet you would think, by these bills in Congress, the American people were not to be trusted and we had to have bills to protect us from ourselves. I think it is an insult to the American people.

Mr. WOOD. Any questions?

Mr. WALTER. No.

Mr. HARRISON. No questions.

Mr. WOOD. We deeply appreciate your coming here and the information you have given us, and hope it didn't cause you too much personal inconvenience.

Mr. HAYS. I have traveled farther to get my views across.

Mr. WOOD. Thank you.

The bells have rung and we will have to adjourn until tomorrow morning at 10:30.

(Thereupon, an adjournment was taken until Wednesday, March 29, 1950, at 10:30 a. m.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

WEDNESDAY, MARCH 29, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The committee met, pursuant to adjournment, at 10:30 a. m. in room 226, Old House Office Building, Washington, D. C., Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood, Francis E. Walter, John McSweeney (arriving as indicated), Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; Louis J. Russell, senior investigator; John W. Carrington, clerk; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order.

The record will disclose that Messrs. Walter, Velde, Kearney, and Wood are present.

Mr. TAVENNER. Mr. Chairman, we have two witnesses here this morning in hearing further the legislative matters that have been pending here for several weeks. The first is Father Clarence Parker. If you will be sworn, please, sir.

Mr. WOOD. Will you please stand, Father Parker. You swear the evidence you give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Father PARKER. I do.

Mr. WOOD. Have a seat.

TESTIMONY OF FATHER CLARENCE PARKER

Mr. TAVENNER. Father Parker, will you please state your full name and address?

Father PARKER. Clarence Parker, 4595 Oakenwall Avenue, Chicago.

Mr. TAVENNER. Are you a representative of the Civil Rights Congress?

Father PARKER. Yes, sir.

Mr. TAVENNER. Father Parker, will you please state your full name and address?

Mr. TAVENNER. Are you aware that the Civil Rights Congress has been declared a subversive organization by the Attorney General of the United States and also by this committee?

Father PARKER. I am aware of that.

Mr. TAVENNER. Father Parker, it has been the policy of the committee to ask each of the witnesses testifying concerning proposed legislation whether or not they are now or have ever been a member of the Communist Party. Would you mind answering that question?

Father PARKER. I will answer the question, but I should like the record to show that I do so under protest for the reason that I consider it an invasion of my constitutional rights. I never have been and am not now a member of the Communist Party.

Mr. TAVENNER. Do you have a prepared statement?

Father PARKER. Yes, sir.

Mr. TAVENNER. Mr. Chairman, at this time I suggest that Father Parker be permitted to read his statement, and if there are questions, that they be asked at the conclusion of his statement.

Mr. WOOD. If that is agreeable to the witness.

Mr. VELDE. Do we have copies of the statement?

Father PARKER. I am sorry; I did not prepare any extra copies.

Mr. WOOD. Suppose, then, Father, you go ahead and read your statement, then perhaps the members of the committee or counsel might desire to interrogate you with reference to some features of it.

Father PARKER. Very well. This statement incorporates matter prepared by Thomas G. Buchanan, our legislative director.

The bill under consideration purports to be directed against Communist political organizations, primarily, and these are identified not only by the titles they themselves assume, but also by the degree to which they do not deviate from the views and aims of a foreign Communist dictatorship.

The bill is aimed as well at Communist-front organizations, and these are identified in part by the degree to which they do not deviate from the views and aims of those organizations which have been identified, as indicated above, as Communist political organizations.

There are other tests as to whether an organization is a Communist political organization or a Communist-front organization, but this one seems to be paramount: Does your organization differ sufficiently in its views and aims from "the foreign government or foreign governmental or political organization controlling the world Communist movement"?

The Civil Rights Congress is a nonpartisan organization whose members share certain common views on the protection of constitutional liberties and the extension of democratic rights, particularly to Negroes and other oppressed minorities. These members have divergent views on other political issues beyond the scope of the Civil Rights Congress, such as their attitude toward communism.

In the Civil Rights Congress we have found it possible to work together on civil rights questions, regardless of political, religious, or other differences. It would be improper for any spokesman of this organization to appear before this committee in the role of a partisan of any particular political party or other group within the Civil Rights Congress. This organization has asked for time to present the views of its membership as a whole. Therefore, I speak here not on the issues that divide us, but on the common grounds which unite us. I speak not as an individual, but as a spokesman for an organization. However, my personal views coincide with those I here present.

The Civil Rights Congress is opposed to the Subversive Activities Control Act of 1950 for the following reasons:

First, registration of organizations under this bill is equivalent to their destruction.

Section 2 (1) establishes as a legislative finding the existence of a—

world-wide revolutionary political movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deeemd necessary, to establish a Communist totalitarian dictatorship. * * *

Section 7 provides for compulsory registration of organizations alleged to be part of this "world-wide revolutionary political movement." By the act of registration, organizations complying with such an order would acknowledge guilt of the crimes listed in section 2 (1). Since there are numerous statutes covering acts of "espionage, sabotage, and terrorism," an organization proclaiming its violation of these statutes could not expect to avoid prosecution under the appropriate laws we have now. An act which presents the alternative of disbanding an organization for noncompliance, or prosecuting the organization for compliance with a registration order, is clearly a measure providing for self-incrimination. If that interpretation be correct, the act is unconstitutional.

Not only does registration under the act guarantee prosecution under existing laws, but an organization complying with a registration order would face prosecution under section 4 (a) of the act itself. This section makes it a crime "to combine, conspire, or agree with any other person to perform any act which would substantially facilitate or aid in the establishment within the United States of a totalitarian dictatorship" under foreign control. The phrase "under foreign control" I think condenses, but correctly interprets, other statements in this connection.

Yet the act which is listed in section 4 as a crime, punishable by 10 years' imprisonment and $10,000 fine, with the abrogation of the existing statute of limitations, is substantially identical with the criteria listed in section 14, by which the Subversive Activities Commission would determine that an organization must register under the act.

In addition to the legal penalties resulting from an order to register under the act, the maintenance of a public blacklist is designed to destroy any organization so listed.

The Senator from South Dakota, in his testimony last year opening the subcommittee hearings—I believe it was in 1948—described as the "first great contribution" to be derived from passage of the bill, that it would make it easier for private industry, in Hollywood and elsewhere, to fire employees who are members of blacklisted organizations. It is appropriate to point out that the group to be blacklisted under the proposed legislation includes not only the rank and file members of "Communist political organizations," but also the rank and file of "Communist-front organizations," to which I made reference at the beginning.

Section 7 provides that the latter must account for all the sources of the money they receive, and consequently they would have to list their dues-paying members and all contributors, as well as their officers. For this reason, it is safe to predict that if the bill now under

consideration by this committee becomes law, the consequences will be very serious for a large number of people, for the collective membership of the organizations so threatened runs into the millions.

The bill makes it "subversive" to associate with certain proscribed groups for legitimate objectives.

Failure to "deviate" from the views of the "world Communist movement" is regarded in the bill as evidence of a "Communist political organization," and failure to "deviate" from the position taken "from time to time on matters of policy" by such an organization is held to be an indication of a "Communist front."

Thus an organization which pursues lawful objectives, by lawful means, even, will be held to be "subversive" if it cooperates with proscribed individuals or groups even toward accomplishing such lawful objectives.

(Representative McSweeney enters hearing room.)

Father PARKER (continuing). During the last 12 months—coming now to the Civil Rights Congress and the way in which we would obviously be affected by such a bill—the Civil Rights Congress, among other activities, has engaged lawyers to defend members of the Communist Party indicted under the Smith Act; it has carried on a campaign to raise funds for the defense of six young Negroes indicted in Trenton, N. J.; it has urged the passage of a Federal antilynching bill, and an anti-poll-tax bill; it has called for an end to segregation in the Armed Forces, and abolition of discrimination in civil service and private industry; it has opposed the Taft-Hartley law, and the bill to legalize wire tapping; and it opposes the legislation now before this committee.

The Communist Party, as well as many organizations that do not share the Communist philosophy, have cooperated with us in each of these campaigns. I would ask if any one of these campaigns is regarded by this committee as subversive? If not individually, how can they collectively be so regarded? Yet the Mundt-Nixon bill makes it clear that any organization, not only the Civil Rights Congress but any other organization that may have cooperated in those activities, would be listed as a Communist front, and on a good deal less evidence than I have mentioned.

Mr. WALTER. What section of the bill would provide that, Father?

(The witness examines papers and H. R. 7595.)

Mr. WALTER. Mr. Chairman, I will withdraw that question now. We will get around to it after you complete your statement, Father.

Father PARKER. Very well, sir.

We object to the establishment as a national policy of the doctrine of guilt by association. We feel that we are in consonance with Americans generally as they come to know about this legislation or any similar legislation in expressing the opinion that it is repellent to the American tradition of individual responsibility; and that tradition, of course, has been frequently expounded by the Supreme Court.

If this bill is restricted to the control of overt acts, it is redundant. If, as we contend, it applies to mere opinion and advocacy, it is unconstitutional.

Mayor William O'Dwyer, of New York City, has been quoted many, many times. I would like to read a quotation from him that no doubt has been heard here before:

We already have laws—

said he—

> that punish treason and other criminal acts against the security or safety of the Government; laws against individual acts or conspiracies to overthrow the Government; and laws that require the registration of agents of foreign governments and of foreign principals. But this bill provides a dangerous short cut to thought-control and police-state regulation. It empowers a Government officer to interpret and censor people's thoughts and opinions and permits him to determine the subversiveness or disloyalty of any political, civic, or religious organization. Its terms are so broad, and yet so vague, as to subject innocent citizens to * * * heavy penalties, not by reason of any act on their part, but for being members of an organization suspected of entertaining dangerous thoughts. It would thus establish the undemocratic and dangerous principle of guilt by mere association, without proof of actual guilt, and without the safeguard of a jury trial. This is precisely the pattern of legislation set by the Nazis and police-state governments for accomplishing the destruction of the rights of the people.

The Senator from Michigan, in a former hearing on this bill, I believe, pointed out that the Government was finding it difficult to prove that the Communists then on trial under the Smith Act had actually committed, or conspired to commit, any specific acts of force and violence. He argued that passage of this bill would permit the Government to prosecute Communists without the necessity of presenting evidence of force and violence. Failure to register would be sufficient ground for prosecution.

We regard this as confirmation of our charge that the proposed legislation is designed to punish criticism of existing institutions, and of the policies being carried out at any time by Government officals.

Sitting here, I added a note which I hope I may read, and which I will turn over with the copy.

The proponents of this legislation—I use that term "proponents" in a broad sense, not applying strictly and limitly to the actual presenters in the Congress—the proponents of this legislation must now find it increasingly urgent, in view of the embarrassing failure of the so-called containment policy, especially in connection with what has happened and what is happening in China, and in view of the questioning of the American voter that is now focusing on the whole implementation of what has been termed, not by me but by persons notably conservative, as Operation Rathole, and similar operations now under way. For since it is clear that no more laws than those we now have are required to deal with acts of disloyalty, why else should free association among the people of America, free expression of their opinions, whether they be for or against the policies of any administration, and even the opinions which they seek to establish for themselves, be at this time subjected to inquisition and threat?

The proponents of this bill would create a new kind of treason, and a new kind of loyalty. They would establish a false identity between the United States of America and the economic or political views of the politicians who administer our Government at any given time. With the ignoble exception of the Alien and Sedition Acts, we have always adhered to the rigid definition of treason given in article 3, section 3, of the Constitution:

> Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The bills now before this committee—the bill in each of the Houses—would require citizens to attaint themselves of treason, solely on a disputed allegation that their views do not sufficiently deviate from the views of a foreign power. We all know what foreign power is referred to, and we know we are not at war with any foreign power. The testimony of two witnesses is not required, and, more important than anything, there need be no overt act.

We have already set forth our conviction that registration of organizations under this bill is equivalent to their destruction, and that the bill makes it "subversive" to associate with the proscribed groups even for legitimate objectives. We feel that what is fundamentally involved here is the freedom of expression guaranteed to all Americans under the first amendment. The applicability of the first amendment to the present type of legislation has been spelled out by the Supreme Court again and again, as, for example, in *Board of Education* v. *Barnette*, (319 U. S. 624, 642) ; and in *Thomas* v. *Collins*, (323 U. S. 511, 545). In the latter case the Court said:

> The very purpose of the first amendment is to preclude public authority from assuming a guardianship of the public's mind through regulating press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not want any government to separate the truth from the false for us.

Thank you.

Mr. WOOD. Mr. Walter.

Mr. WALTER. No questions.

Mr. WOOD. Mr. McSweeney.

Mr. MCSWEENEY. What is your thought on association; what does it mean to you, membership, or just——

Father PARKER. Membership would be association—one phase of association. A declaration of one's approval and support of many activities by any organization would be another form.

Mr. MCSWEENEY. But the mere friendship of a man who differs with you on a political thought or on a certain concept should in no way impugn you?

Father PARKER. That is the way we look at it; yes, sir.

Mr. MCSWEENEY. That is all.

Mr. WOOD. Mr. Velde.

Mr. VELDE. Do you know how many members there are in the Civil Rights Congress at the present time in the United States?

Father PARKER. No, sir; I don't.

Mr. VELDE. Have you any idea?

Father PARKER. I really haven't any idea.

Mr. VELDE. Do you pay dues to the Civil Rights Cogress as a member of that organization?

Father PARKER. Yes, sir.

Mr. VELDE. Do you have a card showing membership in the Civil Rights Congress?

Father PARKER. Yes.

Mr. VELDE. I think there is no one who is more jealous of the rights and freedoms guaranteed by our Constitution than members of this committee and perhaps every Member of our Congress. However, we do realize that there is a Communist movement in the United States of America whose purpose is to overthrow our democratic form of

government. You do have knowledge of such a movement in the United States; don't you, Father Parker?

Father PARKER. No, sir.

Mr. VELDE. Then I take it you would disagree with the verdict of the jurors in the trial of the 11 Communists in New York?

Father PARKER. I do disagree with them.

Mr. VELDE. I wonder if you care to comment upon the testimony of several of the witnesses for the Government, who testified that they were with the teaching groups of the Communist Party and that they taught the overthrow of our form of government by force and violence. Do you think they were giving false testimony to the court up there?

Father PARKER. I don't think one would have to accuse a witness of falsifying testimony in that case or hardly in any case. Of course now and then you do come across something that seems so very obvious that you almost have to take it that way, but I am not thinking of that in this case.

My personal ground for feeling that the verdict was defective—and that is not with any feeling of disrespect for the verdicts of juries nor for the jury system, of which we are all intensely jealous, and because we are jealous we wish to keep it at its best effectiveness, but jurors can't do very much if they don't have all the evidence.

I have in my possession partial transcripts. I hope to be able to examine much more, for the reason that I believe everyone agrees that this is a very critical case, one that has made legal history, and I have heard it stated will make constitutional history, over and above the merits of the case. In the material that I have, it appears that on numerous occasions the desire of the defense to tell what they claimed they really did teach and do teach was not permitted; they were not permitted to do that.

Mr. VELDE. You do realize that there is a Communist Party movement in the United States of America?

Father PARKER. I know there is a Communist Party. I don't know just what you mean by a Communist Party movement.

Mr. VELDE. You know there is a Communist Party in the United States?

Father PARKER. Yes.

Mr. VELDE. Do you believe that Communist Party in the United States is in any way directed by a foreign government?

Father PARKER. I don't think it is. Of course, I have no knowledge of my own that would enable me to say categorically it isn't, but my conscientious belief is that it isn't.

Mr. VELDE. You want this committee to believe that the Communist Party of the United States, in your opinion and in the opinion of the Civil Rights Congress, is not connected with any foreign government?

Father PARKER. The expression "connected" is one which, of course——

Mr. VELDE. Or controlled in any way.

Father PARKER. "Controlled"; I don't think it is. I don't know how the Civil Rights Congress members all think about it, I am sure. I think there are some who do think there is something of that sort, but I don't happen to.

Mr. VELDE. Thank you.

Mr. Wood. General Kearney.

Mr. Kearney. Father, do you believe that the Communist Party of the United States is dedicated to the overthrow of this Government by force and violence?

Father Parker. No, sir; I don't think that.

Mr. Kearney. Then, Father, how do you account for the writings of William Z. Foster, who is the head of the Communist Party in this country, in which I understand he has made that direct statement, that when the revolution comes they will be backed by the Red army. Those are writings on the record coming from the lips of William Z. Foster, the head of the Communist Party in the United States.

Father Parker. I am not acquainted with those writings. I have asked questions of that general tenor of members of the Communist Party. That is to say, I have asked them, "What about the intent to overthrow this or any other government by force and violence"? and they tell me that there is definitely no such teaching in their system. They tell me this, that in their philosophy, in their teaching, is included the explanation that supporters of the status quo throughout the world—this is what they have told me pretty carefully—that their documents and literature teach that the supporters of the status quo throughout the world, when they find the status quo threatened, employ force and violence to repress the threat, and in that way arises a state of force and violence.

Within the last few years I have felt we should all try to understand all sides of this if we can. I had heard, but I had never investigated anything with respect to communism or the Communist Party. So they tell me they are definitely against force and violence themselves.

Mr. Kearney. They might not only tell you that, but myself or anybody else, but still you can go right back to the writings and teachings of the individual members of the Communist Party who from time to time have said to the contrary. Do you believe the Communist Party in any other country is controlled by the Communist International emanating from Moscow?

Father Parker. I don't know.

Mr. Kearney. I am seeking information.

Father Parker. Like myself. I am, too.

Mr. Kearney. Why is it in two countries I know of—at least we have read about it in the newspapers, and that is all we can officially get—why is it commanders of the Red army are now being put in control of those particular countries? They are not citizens of those particular countries.

Father Parker. I don't feel that I can answer questions about fields where I haven't been, not very effectively; I could give an opinion.

Mr. Kearney. Have you ever read any of the statements made by William Z. Foster, the head of the Communist Party in the United States?

Father Parker. I have been planning to for a long time, but haven't gotten around to it.

Mr. Kearney. This is the sworn statement of William Z. Foster, head of the Communist Party in this country:

No Communist, no matter how many votes he should secure in a national election, could, even if he would, become President of the present Government. When a Communist heads the Government of the United States—and that day will come-

just as surely as the sun rises—the Government will not be a capitalist government but a Soviet Government, and behind this Government will stand the Red army to enforce the dictatorship of the proletariat.

That is the sworn statement of the head of the Communist Party in the United States.

Father PARKER. What does he mean by the Red army?

Mr. KEARNEY. The only answer I can give you, Father, is the question you ask, is to ask you, what do you think the Red Army means in this particular case?

Father PARKER. I would say it would be 50–50 whether he means the Red Army you read about in Russia or a Red Army set up under such a government as there visualized.

Mr. KEARNEY. There is only one Red Army in the world today, isn't there?

Father PARKER. I don't know. I know there is one, but I don't know if there are more.

Mr. KEARNEY. There isn't a Red army in this country?

Father PARKER. No.

Mr. KEARNEY. With reference to your thoughts on the question of the criminal code regarding treason, do you think that under the present laws a man could be prosecuted for treason in the courts of this country in peacetime?

Father PARKER. Well, pardon me a moment for thinking that over. I am not sure. It has been some time since I read those acts, but it certainly seems to me that it would be possible.

Mr. KEARNEY. There is one section that reads "Enemy." In peacetime it states on the face of the statute that we don't have any enemy. We have an enemy in time of war. Under that particular section regarding the prosecution for treason in this country, I don't see how it is possible to prosecute anybody charged with the crime of treason unless it is in time of war.

Father PARKER. I would say it seems to me your interpretation must be correct. However, that is the crime of treason as defined by existing laws, if that is the case. But there are laws against acts of violence.

Mr. KEARNEY. Yes: that is true.

Father PARKER. Covering the whole field of anything anyone might do. If someone were to come and do something here of a violent, threatening nature, there are laws that would take care of that transgression.

Mr. KEARNEY. With reference to this particular bill, H. R. 7595, as I understand your testimony through the statement of—Mr. Buchanan, was it?

Father PARKER. Yes, sir.

Mr. KEARNEY. Your organization is opposed to any legislation along these lines, whether this bill be redrafted or rephrased or revised? The organization that you are here representing today is against any legislation being reported out of this committee in connection with this particular subject?

Father PARKER. It is a little dangerous to try to sum a thing up so briefly, but the basic objection is to trying to create a new category of crimes, crimes that do not have to have any overt act to make them a crime.

Mr. KEARNEY. Father, let me ask you this question: Is there any objection on the part of your organization to the expenditures of the appropriations that the Congress is voting for national defense?

Father PARKER. No; not if it is for defense. I wouldn't want to be categorical there, because somebody might say, "You said this, what about that?"

Mr. KEARNEY. Has our country ever engaged in an aggressive war?

Father PARKER. Some small ones, yes, but they weren't called wars, that is true.

Mr. KEARNEY. Would you mind naming them?

Farther PARKER. We have sent our marines to various South American countries, for example. We have engaged in what would be easily recognized as warfare against some of those states from time to time, but not a declared war. Our people, however, and our Government as representing our people, in answer to your original question, have never sanctioned and I am sure never would sanction an aggressive war.

Mr. KEARNEY. Along the lines of expenditures of funds for national defense, doesn't it come hand-in-hand that in that particular connection it is also necessary for legislation to be adopted of some sort, always protecting the rights of individuals and organizations, that will protect the internal security of this country, assuming that the statements of Mr. Foster, which I read, and of others are true?

Father PARKER. That we need laws to protect—What was the question?

Mr. KEARNEY. In other words, we need laws not only to protect this country from enemies from without, but to protect it from enemies from within?

Father PARKER. I agreed with that, but with the proviso—and I am trying to speak in this case for my organization—it seems to me such laws should not go beyond the commission of overt acts.

Mr. KEARNEY. If this bill were rephrased to meet the objections you speak about, I understand then the Civil Rights Congress would be in favor of such legislation?

Father PARKER. That is a difficult question, Mr. Kearney, because it does seem to me that any such reorganization of this bill would be far more difficult than the introduction of a totally new piece of legislation.

Mr. KEARNEY. I don't want to put words in your mouth, but is it your belief that if we rephrase this bill in accordance with your thoughts we would make it worse than it is now?

Father PARKER. It seems to me it would have to be written. It is very tightly organized and ably written as legislation, and if you take part of it out, it seems to me—

Mr. KEARNEY. What this committee is trying to do is to bring out legislation not that will persecute someone or some organization, but we are vitally interested in reporting legislation that will protect our country from enemies from within. Your organization would certainly not have any objection to legislation of that sort?

Father PARKER. Certainly not.

Mr. KEARNEY. That is all.

Mr. WOOD. Mr. McSweeney.

Mr. MCSWEENEY. Father, I was asking about association. Do you feel there are certain positions in our organized society where the person in that position has a different responsibility than a person in

another position? In other words, as an humble Member of Congress, might not my expressions be interpreted differently than if I were in a private capacity as an attorney in my home town?

Father PARKER. I suppose so.

Mr. MCSWEENEY. As an Army officer in Italy, as I was in the last war, my expressions may have been interpreted differently than if I had been an ordinary tourist?

Father PARKER. I think so.

Mr. MCSWEENEY. Don't you think as a spiritual leader, as your cloth indicates, that you have a tremendous responsibility to not invite concepts that you might not invite if you were not a spiritual leader? In other words, your association with anything might give to it a tone where other people would accept it, whereas they would not accept it were you not a member of the cloth. You recognize this responsibility as a member of the cloth?

Father PARKER. I do.

Mr. MCSWEENEY. And you feel you have a responsibility to be sure that what you do does not mislead anyone, because you are a member of the cloth?

Father PARKER. You certainly express my feeling.

Mr. MCSWEENEY. And your approach to this question is with all those thoughts in mind?

Father PARKER. Yes; but may I add something to that. I feel as a religious leader I am also a citizen, and that as a matter of fact I am, of course, by no means alone in this notion. It is more than a notion; it is a conviction. I feel that the terms of the religion which I profess do not merely permit, but demand, participation, preserving throughout the principles of the religion, in everything connected with the life, and especially the welfare, of one's country.

I feel further that the commission thus imposed upon religious leaders, whether my particular group in religion or not, demands that Christian leaders, especially, are under an obligation to extend their practice and their participation, as far as it is possible for them to do so, to the world and to the entire situation in the world.

I would feel, particularly for Christians, that would be a very weighty responsibility not easily discharged, but it is there because it is basic. I don't mean to preach a sermon here, but it is basic to the structure and history of the Christian faith; and central in its concept, of course, is the concept of peace and the propagation of peace.

To shorten this, on which any of us could talk a long time, in endeavoring to discharge that responsibility very many of us have discovered that not all people have arrived at the same point in their thinking. It would be very conceited and unbecoming of any of us to say that we are more mature than other people, but we can say there are other people more mature than we individually. There is variation there. That results in this working principle for a very large number of religious leaders: Namely, that wherever they find someone who wants to help, actually help, effect the things which Christians feel to be basic and important, that help is welcome just so long as it remains in that status and as long as it appears to be honest and sincere.

I myself, in the last 25 years, have revised my own thinking a good deal on this, though I have held the same notion now for nearly two

decades. The opinions which other people may hold or think they hold, if they will act in concert with me on some specific thing, if they will go into a situation where something is going on that is not in harmony with the recognized, basic philosophy of American life, and honestly work to help change or improve that, I let their opinions remain within themselves. I may not understand them. I sometimes do not believe in their opinions. But I am glad to have their help.

Mr. McSweeney. Would this be a fair assumption: Let me go into my own home town where I grew up and where I am proud to have friends. On this piece of legislation I am sure that the spiritual leader of ary Protestant or Catholic church could influence more people on this legislation than I could. Does it not devolve on the leaders on the moral side to be better prepared than I am to lead the people properly? In other words, the leaders on the moral side must be entirely convinced; they must be definitely prepared.

Father Parker. I agree.

Mr. McSweeney. That is all. Thank you.

Mr. Wood. Mr. Walter.

Mr. Walter. I understood you to say if organizations were required to account for funds received it would mean the destruction of many organizations?

Father Parker. Yes.

Mr. Walter. What do you mean by that?

Father Parker. In the present state of feeling over the country there is a great deal of dread in the minds of many people. Anyone who is identified with what has been called subversive is subjected to an excluding process. There are many reasons for that, but the fact is probably obvious, well recognized. Now, I am acquainted with instances in which people have lost their jobs for no other apparent reason, though it is seldom stated actually in words, but no other apparent reason; their records are good, they are good employees, good operatives, nothing against them, but they lose out. There are so many of those—and I am speaking from a considerable personal acquaintance with it, and I understand that is repeated in the experience of a good many other persons—where there are so many of those it appears that the mere report that someone has been involved in, say, worked with the Civil Rights Congress, even, and certainly a report that a man was in sympathy with, that is to say, had some thoughts such as the Communist Party, he would, in my opinion, find his livelihood in danger, and he would find it hard to protect himself, because at the present time there is this general reluctance on the part of most people to enter that field and explore or investigate lest they themselves be suspect by reason of their apparent friendship for the person involved.

Does that explain my meaning?

Mr. Walter. Then you feel that the publication of contributions would result in these organizations described as being Communist-front or subversive being affected or destroyed?

Father Parker. May I add, that brings a further point up that it would be not only the present state of what has been variously termed "hysteria" or "overfear," but also the fact that the terms of the act itself—the act is a kind of scripture; it has a powerful, overriding message which positively cannot be mistaken, in my opinion—the

terms of that act mean to people that if they aren't careful they will get in trouble with the Government.

Mr. WALTER. You are now referring to section 2 of the act?

Father PARKER. Yes, sir. Most people don't want anything like that. The easiest and quickest way to solve a problem of that kind is to dismiss the person. I don't say that would always happen, but it would happen in many, many cases. If it happened in only a few it would be unhappy, because it wouldn't be fair.

Mr. WALTER. In other words, organizations described as subversive would not receive the support they get now if their source of income is divulged?

Father PARKER. That is true. Thank you. That is the third point I had in mind.

Mr. WOOD. And I gather from that statement you would oppose any movement, legislative or otherwise, that would have for its objective the cutting off of funds for any organization, however subversive it might be or declared to be—that is, the cutting off of funds by exposing contributors to them; is that right?

Father PARKER. May I elaborate a bit, because I can't answer the question categorically. Would you mind repeating that question? There is a phrase in it I want to get clear.

Mr. WOOD. The thought I wanted to get over was, as I understand your testimony, one of the objections you have to this proposed legislation is, its final result would be to dry up the sources of revenue for organizations which are subversive and have been so declared. In carrying that to its fullest extent, you would oppose any movement to cut off sources of revenue for any organization, however subversive it may be?

Father PARKER. The crux of that question is, "however subversive they may be." It is for me, at any rate. The decision about subversiveness, in my opinion and that of my group, ought not to be taken apart from the traditional American way of rendering judgment. Our own organization has been declared subversive by Attorney General Tom Clark, no other authority. We feel that doesn't make us subversive. I don't feel that makes me subversive. I am not subversive. Mr. Clark, acting individually, without any commission, could not make me feel I am subversive. Therefore, until there is some typical, fair way of determining this fact, I would be opposed.

Mr. WOOD. Do you quarrel with the way in which that authority is attempted to be set up in this proposed legislation?

Father PARKER. Yes.

Mr. WOOD. What better system could be set up? A man can't be branded and sentence imposed for highway robbery until it has been determined he is guilty. What I am interested in knowing from you is, if you do quarrel with the mechanism set up in this bill to make the determination, would you suggest a better mechanism?

Father PARKER. If a man is accused of highway robbery, everyone knows if he is guilty he is a subversive, socially speaking.

Mr. WOOD. Don't we come back, in this type of legislation, to having to accept or reject the philosophy that has been announced time after time since the days of Marx, that the world Communist movement today is a world-wide revolutionary political movement?

Father PARKER. I doubt it.

Mr. Wood. You doubt that?

Father Parker. Yes.

Mr. Wood. I am just trying to find out where the cleavage is in our views. Going a little further with reference to the religious feature of it, Mr. Kearney has read to you a sworn statement of the present head of the Communist Party in the United States, William Z. Foster. I wonder if you take issue with this further pronouncement made by this same witness when he appeared before the Fish committee in 1935. The question was asked him:

> To be a member of the Communist Party, do you have to be an atheist?

In reply to which he said:

> There is no formal requirement to this effect. Many workers join the Communist Party who still have some religious scruples or religious ideas, but a worker who will join the Communist Party, who understands the elementary principles of the Communist Party, must necessarily be in the process of liquidating his religious beliefs, and if he still has any lingerings when he joins the party, he will soon get rid of them.

Do you subscribe to that philosophy of the revolutionary movement that is now abroad in this land of ours, and is so much abroad throughout the world?

Father Parker. If you mean do I think he is right, that I don't know. I am sure he thinks he is right.

Mr. Wood. I am asking if the sentiment he expressed coincides with your thinking?

Father Parker. The statement was that anyone joining the Communist Party would soon lose his religion if he had any? That is what it boils down to?

Mr. Wood. Yes.

Father Parker. That I don't know, but so far as that is concerned, certainly it would not be my thought that it would do anyone any good to lose his religion, but rather the contrary, whoever he might be. But if I may add this, that is a very broad question with many bypaths, and important ones. For example, it brings up the whole question of what religion is. We know some things as Christians regarding what religion is from a Christian point of view, and the basic expression, perhaps there are two, the Golden Rule, of course, and the summary of the law which Episcopalians here should know very well: "Thou shalt love the Lord thy God with all thy mind and soul." That is basic, not only to all the religious opinions, but to the whole thinking, and should be basic to the living. The second Commandment is like the first one: "Thou shalt love thy neighbor as thyself."

Religion is one of those subjective things which no one can distinguish in other persons or really judge whether they have religion or not. I know some people—they are not Communists, either—who think they are atheists. Sometimes I am respectfully a bit amused, because they don't seem to be without religion to me.

Mr. Wood. But, Father, you wouldn't want this Government to be taken over by a group that has the philosophy that the very Christian thought you have expressed now would be suppressed? You wouldn't want that?

Father Parker. Certainly not.

Mr. Wood. Going back to the question of control by association, do you construe this proposed legislation to mean that any person

can be punished by reason of the fact he associates with someone who comes within the definition of subversiveness as laid down in this proposed legislation?

Father PARKER. If the organization is, by whatever authority short of one, constitutional and in accordance with the American system, adjudged subversive, does that not affect all of its membership? How could it be otherwise?

Mr. WOOD. Do you know there is ample provision in the proposed legislation that any organization declared subversive can amend its character and purpose and apply for cancellation of its registration as a subversive?

Father PARKER. I have observed that provision. It seems an insecure one in that the sole and final arbiter is a board of three individuals.

Mr. WOOD. And a full and final determination of guilt of any crime lies with nine men on the Supreme Court appointed by the same authority as this board.

Father PARKER. But they adjudge whether or not crimes have been committed and do not pass on opinions.

Mr. WOOD. What higher authority can you vest that responsibility in than the President of the United States with the advice and consent of the United States Senate?

Father PARKER. The President, with all respect for the office and the President himself, is but a man, and in my estimation the American system and American philosophy of government has avoided anything so similar to a dictatorial philosophy or a monarchy as reposing final judgment on opinions in one individual, no matter how highly placed he may be.

Mr. WOOD. Both your prepared statement and your answers to inquiries that have been made have been very interesting to me. I wish we had time to prolong the discussion, but the bells have rung and the Congress is now in session. Therefore, we must conclude this immediate hearing, and I shall not ask that you remain for further interrogation, unless there are some individual questions yet to be asked.

Mr. VELDE. I just want to make one comment with reference to the question Mr. McSweeney brought out, and I think he brought it out very well. Anyone who appears before a congressional committee wearing the cloth does carry considerable weight, at least with me, and I think with the opinions of all people, because you are in a peculiar position. In view of that fact, it appears to me that such a person should have a thorough knowledge of the legislation about which he testifies.

Now, Father Parker, in view of the answers that you gave to some of General Kearney's questions with regard to the sworn statement of William Z. Foster and other statements by leaders of the Communist Party relative to their intention to overthrow our form of government by force and violence, I wonder if you yourself feel you are qualified to render an opinion regarding this type of legislation?

Father PARKER. I think that I could be better qualified.

Mr. VELDE. I hope you don't think I mean any disrespect.

Father PARKER. No; that is all right. I know well I could be better qualified. I find it taxing to study legislative documents, and I have not read as much as I should have read of the literature under ques-

tion. I would like, before I forget it, to see this pamphlet and make a note of it. I would like to investigate further that statement.

Mr. VELDE. I am sure the committee would be glad to give you any statements or literature it has.

Mr. KEARNEY. The statement is on the back of this pamphlet, Father [handing to witness copy of 100 Things You Should Know About Communism in the U. S. A.].

Father PARKER. Thank you. The question resolves itself, for me, into this: That it seems to me we are in danger, if I may use a colloquialism, of throwing out the baby with the bath. We want security, but the impression this bill has made on me from the first, even with the revisions that the chairman has mentioned, is an impression that some of the methods used by people whom we disapprove of are now going to be employed, whenever we think it necessary, by us.

Mr. KEARNEY. Father, is your organization opposed to the President's Loyalty Board headed by Mr. Richardson?

Father PARKER. Yes. Well, not to the principles of the Board, necessarily, but to the principles of the Board which functions as it is set up to function.

Mr. KEARNEY. That is all.

Mr. WOOD. That presents another very interesting query, Father. You say your organization is not opposed to such a board if properly set up and functioning, but this particular Board you do oppose?

Father PARKER. The question, I believe, was, are we opposed to the Loyalty Board. I should rephrase that answer to say we are opposed to the principle of investigating people without their knowledge that they are under suspicion; of taking action on their cases without their knowing, in many instances, what they are charged with. Lately there has been a little change, according to the newspapers, but not a great change. Action is taken without their knowing, for the most part, what they are charged with; without their being able to prepare their defense and bring witnesses.

The Board does not go back, I believe, to the beginning. Before the Board came into existence, people were thus placed under suspicion of disloyalty and they lost their employment, nearly all of them.

May I continue a moment? I want to get this out in right form if I can.

The punishment is terrific, not only losing their employment, but, far worse than that, it is hard to think of anything that could be such a crushing thing upon an American as to be suspected of disloyalty. People who give currency to the suspicion don't know that in many cases, or in most cases, the persons themselves for a long time didn't even know what they were accused of, and for the most part they never know who their accusers are.

Mr. WOOD. Of course, that line of thought is not involved in this legislation.

Father PARKER. We are opposed to anything that would do that sort of thing.

Mr. WOOD. That is not involved in this legislation. It has been determined by the Supreme Court of the United States, in a decision by Mr. Justice Holmes, that a man does not have a constitutional right to be a policeman, but he does have a constitutional right to belong to any organization he wants to belong to, short of an organi-

lation to bring about the overthrow of our Government by force and violence.

Father PARKER. I was interested in the case of a policeman who was accused of doing wrong, and I felt he should be energetically defended. He was, as a matter of fact, and didn't need anything particularly from me.

It is true that a man does not have a constitutional right to demand and have a job as a policeman or any other Government job, or any other job, I guess. He has a right to live. But he certainly has a right, while he is on the force, to have his reputation protected. He has a right when he leaves the force not to leave it under a cloud of suspicion. It ought to be cleared up.

Mr. WOOD. By some method adopted by the American people?

Father PARKER. Yes.

Mr. WOOD. I can't leave unchallenged the statement you made using as an illustration that this legislation is somewhat akin to throwing the child out with the bath. Don't you agree, from a careful study of the proposed legislation, it rather is designed to prevent having to burn down the barn to get rid of the rats?

Father PARKER. I think it is burning down the barn to get rid of rats we are not sure are there.

Mr. WOOD. If we wait until the Government is overthrown, haven't we done that?

Father PARKER. I don't think the American people will let this Government be overthrown. I don't think we need have any uneasiness about that.

Mr. WOOD. Thank you, Father, for coming here. I enjoyed very much your discourse.

The committee will stand at recess until 10:30 tomorrow morning.

Thereupon, at 12:10 p. m. on Wednesday, March 29, 1950, a recess was taken until Thursday, March 30, 1950, at 10:30 a. m.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

THURSDAY, MARCH 30, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The committee met, pursuant to adjournment, at 10:30 a. m., in room 226, Old House Office Building, Washington, D. C., Hon. Francis E. Walter presiding.

Committee members present: Representatives Francis E. Walter, John McSweeney (arriving as indicated), Morgan M. Moulder, Harold H. Velde, and Bernard W. Kearney.

Staff members present, Frank S. Tavenner, Jr., counsel; Louis J. Russell, senior investigator; Charles McKillips and William Jackson Jones, investigators; John W. Carrington, clerk; and A. S. Poore, editor.

Mr. WALTER. The meeting will come to order.

Mr. Straight, will you raise your right hand, please. You swear the testimony you will give in the matter now in hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STRAIGHT. I do. Would you like to swear Mr. Nikoloric also? He will be with me.

Mr. WALTER. Do you swear the testimony you are about to give in the matter now in hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NIKOLORIC. I do.

TESTIMONY OF MICHAEL STRAIGHT AND LEONARD A. NIKOLORIC

Mr. WALTER. State your names, please, for the record.

Mr. STRAIGHT. My name is Michael Straight. I am the national chairman of the American Veterans Committee.

Mr. NIKOLORIC. My name is Leonard A. Nikoloric. I am a lawyer with the firm of Arnold, Fortas & Porter in Washington. I have advised the American Veterans Committee with respect to this bill.

Mr. TAVENNER. Mr. Straight, will you state your official position with your organization?

Mr. STRAIGHT. I am the national chairman of the American Veterans Committee.

Mr. TAVENNER. It is the practice and custom of this committee and committees of the Senate to ask each witness appearing on subversive questions whether or not he is now or has ever been a member of the Communist Party, so I would like to ask you that question.

Mr. STRAIGHT. I am not and have never been a member of the Communist Party.

Mr. TAVENNER. Do you have a prepared statement?

Mr. STRAIGHT. We have a prepared brief which I understand you would like to have submitted for the record rather than read out loud. I would like to make a few spontaneous remarks regarding our feelings on this matter, which are not legal. The brief contains our legal interpretation of the bill.

Mr. TAVENNER. That is satisfactory.

Mr. STRAIGHT. Mr. Nikoloric has prepared this brief, and in the brief we explain why we feel the bill before you is unconstitutional. We feel that any effort along the lines of this bill to legislate in matters of opinion is probably unconstitutional. We feel in this particular case if the bill were enacted by the Congress and were upheld by the Supreme Court, then, because the bill attempts to legislate by fiat, and because it attempts to punish people for association and opinion without the safeguards of common law, it would open up not only the Communist Party but other organizations in this country to a threat of prosecution for holding adverse opinions to the normal trend of the time.

The Veterans of Foreign Wars, as a principal proponent of this bill, has declared, as has the Marine Corps League, that the world-government movement is treasonable.

Mr. KEARNEY. Let me interrupt you on that point you have brought out here. Have they declared the world-government movement treasonable?

Mr. STRAIGHT. The chairman of the Marine Corps League has, and I believe the Veterans of Foreign Wars has too.

Mr. KEARNEY. I will take issue with you on that. I don't think they have. I have been strongly criticized for being one of the sponsors of the world-government bill, but I am a past commander of the Veterans of Foreign Wars, and no spokesman for that organization, to my knowledge, has ever declared the world-government movement a treasonable movement.

Mr. STRAIGHT. I could show you some briefs that I believe indicate that position. In a speech in Boston the chairman of the Marine Corps League has declared the world-government movement to be treasonable.

Mr. KEARNEY. That is not the Veterans of Foreign Wars.

Mr. STRAIGHT. No, it is not. Advocates of world government are placed in jeopardy if this bill were considered constitutional.

If there were no legal objections to this bill, we would still think the political objections to this bill were overriding. We share much of the opinion of many witnesses who have appeared before this committee that the Communist Party is a party directed from abroad by a foreign power. We believe it does advocate the overthrow of the Government by force and violence. We believe in many cases the Communist Party is used as a reception center and a training ground for espionage agents on behalf of a foreign power.

However, we don't believe that the Communist Party today is a clear and present danger. We do not believe it can be isolated, and that it can be found to be concentrated in a very few front organizations such as this bill supposes. On the contrary, we believe the Communist Party can be found to be working in a very broad field

of political organizations, perhaps in some of the organizations that have testified against this bill.

We believe that since the Communist Party makes a practice of deception, makes a practice of attempting to confuse Communist Party members with non-Communist Party members, it is very hard to differentiate between non-Communists and Communists.

We recognize the Communist Party will be affected by legislation passed by the Congress, but we think nonetheless the advances and retreats made by the Communist Party in American life are made at the fighting fronts of organizations in which the Communist Party is attempting to carry its policy.

Mr. Kearney, you know in your home town of Schenectady a fight has been waging for a long time between Communist leaders and the electrical workers, and from a superficial knowledge of that fight I can't believe it will be resolved by what is done in Washington. I think it will be resolved by what is done in Schenectady.

Mr. KEARNEY. By the union.

Mr. STRAIGHT. That is right.

Mr. Chairman, we always come down to specific cases in matters of this kind, and in asking whether this bill will help or hinder those of us who are opposed to the Communist Party, I would like to mention the experience of our own organization, the American Veterans Committee, in this matter.

I think most of the veterans' organizations at some time have been infiltrated by members of the Communist Party. The Communist Party, after the war, laid down as a policy of its Veterans Affairs Director that the Communist Party should infiltrate the American Legion.

The American Veterans Committees was formed in 1945, and between 1945 and 1947 the Communist Party continually attacked the American Veterans Committee in the Daily Worker. After the American Veterans Committee made considerable progress and carried on a fight for emergency veterans' housing and other issues in which the Communists apparently felt we were making a strong appeal to the householder and veteran and worker, they reversed their line and attempted to infiltrate our organization. As far as we know they assigned some of their top veteran leaders to capture our organization. That fight went on for 4 years. The non-Communists, such as Mr. Nikoloric and myself, counterorganized. We had for a time two caucuses working with considerable secrecy. We were forced to adopt some of the Communist tactics to combat them. In the course of that fight the non-Communists demonstrated their ability to out-think and out-work the Communist minority.

Mr. WALTER. Wasn't that due entirely to the fact you were able to spot the Communists?

Mr. STRAIGHT. No. That is a very important point. We could not today name a single Communist in our organization who was active. We had John Gates who belonged and paid dues, but he was not active. He came to our meetings and directed his caucuses from hotel rooms. Today we would be unable to tell you who was a Communist in our organization and who was a Communist sympathizer, which is precisely why we have come here today to explain our views.

In a series of steps, in which we were required to take more and more aggressive action to clear our good name, we finally drove the

Communist Party out of the American Veterans Committee completely, to the extent they are now setting up their own front. But we did it without violating any statutes in the States in which we operate. We were taken to court by the Communist Party several times, and we were upheld.

I think in doing that we set a pattern for all responsible organizations to follow. I think it is harder to tackle this problem in a voluntary organization than in a union, which is an involuntary organization. We demonstrated this could be done.

Mr. VELDE. Will you explain what you mean by a voluntary organization as distinguished from an involuntary organization?

Mr. STRAIGHT. A worker must belong to a trade union in a closed shop plant in order to qualify for worker's benefits, and therefore he is compelled to stick out that fight, and if he is in the minority he has to fight it through. I think a trade union in a closed shop is a situation where if a man wants to get out of the union he has to change plant or change his trade. In our organization there is nothing that compels a man to remain in the organization. He can go join another organization.

Mr. VELDE. Membership in a labor union you would say is voluntary or involuntary?

Mr. STRAIGHT. I didn't use the word involuntary. I said if a man wants to work in a closed-shop plant he has to belong to a trade union.

Mr. VELDE. I think the man who belongs to a trade union is a voluntary member.

Mr. STRAIGHT. I am not saying it to reflect on the trade-union movement. It is more voluntary in an organization such as our own than in an organization which has a basic monetary appeal. No one gains materially by belonging to our organization.

I would like to raise this question: Would it help in this kind of struggle we have been through to have the kind of legislation now before you? I would think it would not. As I suggested in reply to your question, Mr. Chairman, the Communist Party was long underground in our organization. We didn't know who they were and didn't know how they operated. We were only able to watch, as far as we could, the kind of signals they were developing. It so happened those signals were published in the Daily Worker. Had the Communist Party been underground, it would have been harder for us.

The efforts of the Communists were directed to winning away the veterans in this organization without experience in dealing with Communist propaganda but with some degree of acceptance of at least some of the slogans put out by the Communists. The ability of non-Communists to fight depends on the issues on which they are allowed to fight. We made the fight on the Marshall plan, and the Marshall plan appealed to a great majority of non-Communists. We made the fight on the Atlantic Pact and military assistance. On all those issues we were able to drive a wedge between Communist Party members and those who might be deceived on housing and other issues. To the extent the issue was the defense of civil rights, we were unable to drive any wedge, because on that issue there is no surface distinction between the Communist Party and our organization.

Also, Mr. Chairman, I think this kind of legislation weakens many organizations which in my opinion are the strongest bulwarks against the advance of the Communist Party in this country. If there seems

to be some threat that an organization will be brought up before your Subversive Activities Control Board, or mentioned in some way, then a good many people of good will will choose not to come in and fight it out, but to get out and let the Communists take over an organization of that kind.

Mr. KEARNEY. Isn't that a fact with a lot of the organizations today, and isn't that the reason the Communist minority has secured control of particular organizations, because the real Americans get a little tired of going to those meetings and continually fighting when all they wanted when they joined was a life of peace?

Mr. STRAIGHT. That is a real reason which we have experienced in our organization, but I would add if those people you are talking about felt that by coming in and slugging it out they were exposing themselves to prosecution for belonging to an organization infiltrated by Communists, that would not help us.

I do not say you have not provided some safeguards in this bill, but I feel under section 14 an unprincipled man might charge the American Veterans Committee with violation of the law. I don't think that charge would stick, but I think the charge itself would be sufficient to destroy our organization, which is conducting an effective fight against the Communist Party. We have in the past supported many issues the Communist Party has also supported.

Mr. WALTER. Don't you think the safeguards set up with respect to hearings are adequate? It is more than a mere charge; it is a public hearing. And certainly it seems to me that with the appeal there are ample safeguards against just a charge unsupported by facts.

Mr. STRAIGHT. I should say if the appeal were held here under the Appeal Board in Washington, and if in that appeal we should be cleared completely, back in communities 500 or 600 miles from Washington where the news leaks down and becomes simplified, the fine points of debate known to you here would not be brought down. We found when we brought out an anti-Communist resolution, just the linking of the name of the American Veterans Committee with Communists in itself was a major cause for hurting our organization back in the communities. If we were charged by some irresponsible person with violating the law, we would lose two-thirds of our membership by reason of the charge.

Mr. KEARNEY. Do you mean your organization suffered from introducing an anti-Communist resolution?

Mr. STRAIGHT. Yes, sir.

Mr. KEARNEY. How is it that other organizations of veterans who always introduce such a resolution annually have not suffered?

Mr. STRAIGHT. Because we are a smaller organization than the American Legion, for example, and a new organization. In Oklahoma there are one or two Communists. The linking of Communists with the American Veterans Committee appeared for the first time in the press and we lost members when they found we had a problem.

Mr. VELDE. How many members does your organization have?

Mr. STRAIGHT. Approximately 8,000. We are having a membership drive now and we expect to have 25,000 members. We have 300 chapters.

Mr. KEARNEY. What was your top membership?

Mr. STRAIGHT. 20,000.

Mr. KEARNEY. And now it is 8,000?

Mr. STRAIGHT. It will be 20,000 or 25,000.

Mr. KEARNEY. Wasn't that due to membership of members of the Merchant Marine?

Mr. STRAIGHT. We lost very few of them. The fact we had to make this fight cut down our membership.

As I said, we are not a political organization and not a partisan organization. We are trying to bring about changes that will make it more difficult to have a depression in this country. We think the Communist Party might be a threat in the event of a depression, as it was in the last depression, and we don't want to see another depression. We think the Communist Party might be a threat in the event of another war, and we don't want to see another war. We think the Communist Party is on the run, and we think it can be kept on the run by continuing prosperity. We believe if it becomes a clear and present danger, then by that time communism will have triumphed in the rest of the world before it becomes a threat in this country. We think the critical front is in Berlin, Southeast Asia, India, and Rome. We think it is an illusion to believe Americans can gain security by attempting to drive underground or destroy a little band of shabby men on Fourteenth Street whom we think we can lick by normal constitutional measures within existing laws. We think to the extent we create that illusion, that illusion is a point in favor of Joseph Stalin.

We stand on the well-tried principles of Abraham Lincoln, who said: "Place the chains of bondage on others and you will make yourself the willing victim of the first tyrant that comes among you."

We have been in the front lines of a fight that is very much among us today.

Mr. TAVENNER. Will you submit the legal brief?

Mr. STRAIGHT. Yes, sir. I have it right here.

(The brief above referred to is as follows:)

Mr. Chairman and gentlemen, Mr. Michael Straight, chairman of the American Veterans Committee, has stated the policy considerations which lead the American Veterans Committee to oppose H. R. 7595. My statement will be confined to a short discussion of what we consider to be some of the constitutional objections to the bill.

The first long section of the bill, which is No. 2, purports to set out 11 findings of fact. The purpose of this section is obviously to keep the courts from reviewing the basic facts which will justify the Congress in passing such sweeping and restrictive legislation. It is elementary that this type of legislation can only be deemed constitutional when there is a "clear and present danger" to the United States and its institutions. The purpose of the section is to legislate a finding of fact that such a "clear and present danger" exists and to deny to the courts the ordinary review of the facts.

This process has always been deemed unconstitutional. The Congress cannot legislate a state of facts in order to justify legislation. This is known as legislative fiat and has many times been held violative of the due process clause.

An example of a Supreme Court holding was cited by Attorney General Tom C. Clark when he appeared before this committee on February 5, 1948. The case is *Manley* v. *State of Georgia*, which appears at 279 U. S. 1. At page 6 of the report it is said:

"* * * A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repeal it violates the due process clause. * * * Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property."

A study of the cases reveals that the Manley case has never been reversed or even seriously questioned. Furthermore, this bill embodies much more sweeping findings of fact than any legislation declared unlawful by the cases in question.

Directing the committee's attention to subsection 11, which is the finding that there is a clear and present danger to the security of the United States, the American Veterans Committee agrees with the testimony that has already been presented here to the effect that no such clear and present danger exists.

There are on the statute books between 20 and 30 pieces of legislation specifically designed to take care of the menace of international communism. To name just a few of them, there is the Smith Act of 1940 which provides that any conspiracy to overthrow the Government by force or violence is a criminal offense. The Voorhis Act requires any organization subject to foreign control to register. There is the Foreign Agents Registration Act, amended in 1942, which requires all agents of foreign powers to file statements with the Department of Justice and to label clearly any political propaganda disseminated by them. In the event it is determined that the American Communist Party is in fact the agent of a foreign power, the provisions of this act are sufficiently broad to include that party. There are also innumerable treason, sedition, sabotage, and conspiracy laws. Furthermore, there are laws which prohibit the employment by the United States of any person who advocates the overthrow of the Government by force or violence.

Many times in the past precipitous action has been advocated to punish nonconformists in the name of a clear and present danger. The men who have been remembered by history have been those who recognized that strict adherence to the requirements of the Constitution should prevail in the face of public hysteria. One has only to recall the Alien and Sedition Acts passed by those who felt that the French Revolutionists constituted a clear and present danger to the United States. In the 1830's there was a widespread movement to outlaw the Roman Catholics. The Know-Nothings felt that they, too, constituted a clear and present danger to the United States and were agents of a foreign power. The Know-Nothings wanted to outlaw the Roman Catholic Church and pass laws prohibiting Catholics from holding public office. After the First World War the Bolshevik scare led us to undertake legislation in the name of a clear and present danger which we now regret. Our history has proved, not only in strict and legal compliance with the terms of the Constitution, but in practical terms, the wisdom of refraining from transgressing the principle that democratic freedom, whether we like it or not, means freedom even for those we loathe. The American Veterans Committee further believes that the finding in subparagraph (9) is extremely dubious.

In the interests of brevity I shall not discuss section 3, which defines the terms of the act. These definitions have been characterized to this committee previously as being too broad constitutionally to permit of criminal prosecution.

Our main objection to this legislation is found in section 4. This section is particularly objectionable in that it makes unlawful free thought and the right of free political activity and association which are simply the exercise of rights guaranteed to all by the Constitution.

It is true that section 4 was undoubtedly framed in the belief that a clear and present danger to the United States exists. But even if the Congress could legislate by fiat a clear and present danger, the activities to be punishable must be overt actions endangering public peace and order. The Constitution has never permitted thought and association or other activities, which in themselves did not lead to breach of the peace, to be punished. An example of how zealously the courts safeguard this constitutional mandate is to be found in the Supreme Court's decision in the Terminiello case last term. This case appears at 337 U. S. 1. It is said in the majority opinion at page 4 that:

"A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

We are not alone in voicing our fears of this section. Senator Estes Kefauver has stated:

"I have grave doubts as to the constitutionality in that it may violate guaranties of freedom of press, speech, and individual liberty, * * * especially those contained in section 4."

Senator Kilgore has stated with respect to the final draft of S. 2311, the companion bill to H. R. 7595, that:

"It is fundamentally a sedition bill."

The New York Bar Association is also on record as opposing the enactment of the bill because of "disapproval of the sedition provisions."

The activities prohibited by section 4 are so broad that they violate the provisions of the first amendment. This amendment, as you know, guarantees the right of freedom of religion, speech, press, and peaceful assembly. Section 4 (a) renders it unlawful for any person to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment in the United States of a totalitarian dictatorship. There are so many cases which declare this type of legislation unconstitutional that they hardly need repeating here. Any person in the United States has the constitutional right to believe that a dictatorship as defined by the bill is the best form of government for this country so long as he does not directly take action in accordance with his belief that leads to a substantial breach of the peace. One of the leading Supreme Court cases embodying this principle is *Schneiderman* v. *United States*, which came down in 1943 and is reported at 320 U. S. 118. In this case the Government attempted to cancel Schneiderman's naturalization because it developed that he was a member of the Communist Party. The Court upheld Schneiderman's right to believe as he saw fit and said at page 139:

"Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed."

The Court gave particular attention to the rights of an individual to affiliate himself with any particular political party or group he chooses. At page 136 it said:

"* * * under our traditions beliefs are personal and not a member of mere association * * * men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles."

It is important to note that this statement by the Supreme Court renders erroneous the blanket finding in section 2, subparagraph 9, to the effect that all individuals who willfully participate in world communism constitute in effect a clear and present danger.

H. R. 7595 goes further than to punish any act contributing to the establishment of a dictatorship. The registration provisions of sections 7 through 11 punish membership in the Communist Party or in Communist-front organizations. This is not enough. There is no more fundamental guaranty of freedom than the constitutional maxim that neither Congress nor any other body can prescribe what shall be orthodox in terms of political belief, religious worship, or any other matter of opinion. These sections are designed clearly to punish, directly or indirectly, Communist or leftist ideology or association. No doubt these sections are couched in terms of registration and identity of propaganda, but the net effect of them is to subject any member of the Communist Party or a so-called front organization to public opprobrium. We have seen in the last few days what this means. Even when simple allegations are made public that a man is a Communist sympathizer he is threatened by his neighbors, his family is subjected to scorn and degradation, and he is more than likely to lose his job.

Such approbation is punishment. We submit that in subjecting persons to such punishment the proposed legislation violates the sixth amendment which guarantees the rights of trial by jury and confrontation of witnesses.

We should not be confused by recent cases which hold that the Federal Government has an arbitrary right to fire whomever it chooses. These provisions of the act have nothing to do with the right of the Government to fire. They concern the right of every citizen to live in peace and to think as he chooses.

Furthermore, these sections require organizations to adopt a characterization as Communist or Communist-front with which they may not agree. These characterizations may be quite inaccurate. Certainly members of the organization may consider them inaccurate regardless of the leadership. Yet these very members who may not clearly understand the objectives of the organization are subject to punishment only because they have innocently become associated with organizations required to register by the act.

But public opprobrium is not the only kind of punishment levied by H. R. 7595. Section 12 denied organizations tax deductions. Section 5 declares it unlawful for a member of a registered organization to seek public employment.

Even less understandable are the terms of section 6. Subparagraph (a) punishes a member of a registered organization by declaring it unlawful for any

member to apply for a passport or to use any passport. Furthermore, the wisdom of this provision is questioned. In practical terms encouraging Communists or Communist sympathizers to leave the country might well be the best way to handle the problem of subversives.

It is worthy of note that section 6 (b) places a tremendous burden upon passport officials, declaring it a crime to issue a passport to any member of a registered organization if the issuing officer has reason to believe that the applicant is a member of a registered organization.

The constitutional objections with respect to individual freedom of thought also apply to the sections dealing with the establishment and activities of the Subversive Activities Control Board, section 13 and following. This Board is directed to determine whether any organization is a Communist political organization. Certain vague standards are suggested for the consideration of the Board. These organizations may be labeled as undesirable solely on the basis of ideas and opinions rather than on the basis of unlawful and overt acts.

In determining whether any organization is a Communist political organization, the Board is directed to take into consideration not a single activity which could possibly be construed as unlawful. The same thing applies in the determination of whether an organization is a Communist-front organization. Most objectionable is the provision of section 14 (a) (4) which establishes as a criterion for labeling an organization "Communist front" "the extent to which the positions taken or advanced by it from time to time on matters of policy which do not deviate from those of any Communist political organization * * *." It is not our purpose in presenting this statement to build up straw men or to cite to the committee fantastic possibilities of the restrictions on freedom that could occur pursuant to this proposed legislation. We do not believe that this bill is consciously directed toward breaking labor unions, promoting anti-Semitism, or any of the other scare possibilities raised by some of its opponents. This provision, however, makes it dangerous for any organization to support perfectly legitimate objectives which are also supported by the Communists or by Communist-front organizations. The American Veterans Committee is on record as opposing the poll tax, as advocating civil rights legislation, housing bills, and the repeal of the Taft-Hartley Act. Presumably, according to this bill and in particular the cited section of it, we are eligible for designation as a Communist-front organization in spite of our long record of opposition to communism. This fact in itself should be adequate demonstration that these standards are violative of the constitutional provisions against guilt by association without citation of Supreme Court cases.

There is one other basic constitutional defect in this bill which deserves attention. It is fundamental and elementary in criminal law that a statute drawn in vague and indefinite terms violates the right of an accused under the due-process clause to be fairly apprised of the charge or charges made against him. An example of this is *Stromberg* v. *California* (283 U. S. 359), where the Supreme Court said at 369:

"A statute which upon its face * * * (is) * * * vague and indefinite * * * is repugnant to the guaranty of liberty contained in the fourteenth amendment."

Time does not permit an analysis of all of the 38 pages of this act in terms of this requirement. Picking one at random—which has been improved over its counterpart in earlier proposed legislation—it is declared unlawful to perform any act which would substantially contribute to the establishment of a dictatorship in the United States. These terms are so broad that the provisions of *Herndon* v. *Lowry* (301 U. S. 242) apply. It was there said:

"The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government. * * * No reasonably ascertainable standard of guilt is prescribed. So vague and indefinite are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guaranties of liberty. * * *"

Throughout the bill the terms "movement," "facilitate or aid," or "any act" appear over and over again; such words have no common meaning and are capable of the widest construction.

Those provisions of the bill establishing standards for declaring an organization to be a Communist political organization or a Communist-front organization are so vague that they scarcely need discussion in terms of the requirements of the Constitution.

It is obvious that this bill has been drafted with a complete understanding of the constitutional hazards involved. Every effort has been made to avoid the pitfalls. In spite of careful draftsmanship the bill proves one thing: it is impossible constitutionally by criminal legislation to outlaw the nonconformist. The reason for this is a simple one. The Constitution is an instrument to protect the nonconformist. It was designed to prevent us from employing despotic measures in a free society to rid ourselves of those whose opinions we loathe.

As expedient as it may be to effect the outlawing of the Communist Party, this bill proves that it cannot be done constitutionally. Whatever the practical advantages may be—and the American Veterans Committee believes there are none—we pay a price for freedom. That price is the necessity to fight by constitutional means ideologies the purpose of which is to destroy the very freedom within the framework of which we must operate.

The American Veterans Committee would like to thank the committee for this opportunity to make its views respecting H. R. 7595 known.

Mr. WALTER. I think the record should show the presence of Messrs. Moulder, Velde, Kearney, and Walter.

Any questions?

Mr. MOULDER. At the beginning of your statement you made some reference to your opinion that communism did not constitute a menace or danger in this country. I assume you confine that to a political party in this country, or were you referring to communism being a danger in the world-wide movement?

Mr. STRAIGHT. I think it is a very grave danger on a world-wide front, and I think it is a danger in this country, but I think this legislation justifies the action proposed by finding the Communist Party to be a clear and present danger as defined by Mr. Justice Holmes, and I think in that sense the Communist Party is not a clear and present danger at the present time.

Mr. WALTER. Mr. Velde.

Mr. VELDE. I don't want to inquire into the activities of the American Veterans Committee, but would you mind telling us what percentage of your membership is opposed to this legislation? Do you think it is unanimous?

Mr. STRAIGHT. I would think it is unanimous; yes. I have just completed a tour of our New England chapters, and they made it a point to ask me to testify before this committee.

Mr. VELDE. I suppose you would say no legislation of any kind is necessary?

Mr. STRAIGHT. Mr. Nikoloric feels the legislation presently on the statute books is sufficient. We don't see how it is possible to legislate on an issue of this kind, involving matters of opinion.

Mr. VELDE. I think you realize the Communist Party of the United States took the lead during the last war in attempting to obtain our military secrets. Do you think we have been successful in convicting members of that espionage ring?

Mr. STRAIGHT. No, sir; but I think the remedy is to tighten the espionage laws. I think the Communist Party is used as a recruiting grounds for espionage agents.

Mr. VELDE. How would you go about tightening the espionage laws? I understood you to say a while ago the present laws were sufficient.

Mr. STRAIGHT. I am not legally briefed on that. Perhaps Mr. Nikoloric could answer that.

Mr. NIKOLORIC. I haven't studied the espionage acts with any thoroughness. However, in general, 2 days ago I counted 27 laws

specifically designed to take care of the Communist problem in this country. They range from treason, which would take place in wartime, then there are espionage laws, the Voorhis Act, the Smith Act. There isn't anything I think you are accomplishing here that is not adequately taken care of in those acts. In the espionage law I understand the limitation is a little short, and there are some loopholes.

Mr. VELDE. Do you agree with Mr. Straight that the laws are not sufficient to handle the espionage problems?

Mr. NIKOLORIC. I haven't read any hearings on whether you believed the espionage agents were getting by under the present laws. I don't know if that is the case. But if it is, you should be able to take care of that under the Espionage Act rather than legislating on opinion.

Mr. WALTER. This bill does not do legislating as to opinion, and you have addressed all your remarks to that issue.

Mr. STRAIGHT. That is right.

Mr. NIKOLORIC. I was here yesterday, for example, and heard Father Parker testify. I think you agree with me that there is nothing dangerous about Father Parker. I don't agree with him on certain matters; however, if you are going to punish a man like Father Parker, which you will in effect do under this act, I think you are going too far. I think he has been fooled by people in his organization, and I don't agree with him, but I respect his constitutional right to do whatever he chooses so long as he doesn't commit any dangerous acts. He is entitled to his beliefs, whether you agree with him or not.

Mr. KEARNEY. Do you agree with his thoughts that the Communist Party is not dedicated to the overthrow of this Government by force and violence?

Mr. NIKOLORIC. Let me put it this way, General: I have met many people labeled "Communists" and "Communist sympathizers," and many of them, in my opinion, do not advocate the overthrow of the Government by force and violence.

Mr. KEARNEY. But it is the policy of the leadership, and the sworn statement of the head of the Communist Party in the United States?

Mr. NIKOLORIC. Certainly. I agree with you on that score.

Mr. KEARNEY. I agree with you there are many individuals who might be on what I would call the fringe who certainly do not believe in the overthrow of the Government by force and violence, but that is the intent of the party itself and of the party leaders, and you have their sworn statements to that effect?

Mr. NIKOLORIC. That is right.

Mr. STRAIGHT. Up to this time there has been no legislation on opinion. You have no precedent for punishing people by reason of association.

Mr. WALTER. Have you any objection to that portion of the bill which would require Communist political organizations to publish their financial statements?

Mr. STRAIGHT. We have tried to follow very closely this whole matter of disclosure, and we believe if disclosure were applied to all organizations it might well be applied to Communist political organizations and Communist fronts, but I don't think we are showing too careful a distinction between the organizations required to make disclosure.

Mr. NIKOLORIC. I want to add one thing to that. There is a very clear line in the Supreme Court. If this bill, for example, required

any organization to make full disclosure, that would be one thing, but inasmuch as its discriminates against Communist political and front organizations, in my opinion it is clearly unconstitutional.

Mr. WALTER. I don't agree with you, because the courts have passed on whether political organizations should be required to make financial statements. Those statutes have been tested and held to be constitutional.

Mr. NIKOLORIC. What you have done here, you have legislated by fear of a clear and present danger. If you are able to do that, your discriminatory provision could well be declared constitutional. The key is section 2. I don't think it is constitutional.

Mr. WALTER. Applying the Holmes decision——

Mr. NIKOLORIC. You have done that by legislative fear. The court must make a finding of a clear and present danger, and not the Congress. We have studied this bill very carefully, and whoever drafted it I think is clearly aware of these constitutional pitfalls; but the bill proves to me it is impossible to legislate constitutionally on this question.

Mr. WALTER. May I direct your attention to section 14 (e) (2) on page 27?

Mr. NIKOLORIC. I might say I am not and never have been a member of the Communist Party, since I have opened my mouth here.

Mr. WALTER. Read beginning at line 25 on page 27, section 14 (e) (2): "the extent to which its views and policies do not deviate from those of such foreign government or foreign organization."

I believe "such" refers to a Communist-dominated foreign government. Might it not be possible that if the Socialist Party of the United States should adopt the platform of the Socialist Party of England, it might come within the purview of this statute?

Mr. NIKOLORIC. I think it might. As I read the line of cases having to do with the vagueness of criminal statutes, I don't think the criteria in section 14 (e) and (f) are sufficiently tight. As soon as you tighten them up, the Communists will duck out of another door.

In section 14 (f) (2), for example, there are two objections to it. One is that the standards are so vague by which you are subjecting a so-called front organization to the restrictions of this bill. In the second place, as Mr. Straight pointed out, there are certain areas in which there is agreement between the American Veterans Committee and the Communist Party—housing, civil rights, and the like. It is possible that a board or prosecutor under this act could cite us under the registration provisions pursuant to this subsection.

You never know who is going to be hit by a bill until you find who is sitting in the Attorney General's office and who is sitting on the board. As you know full well, a bill can say one thing, but it depends in whose hands the enforcement lies what is going to happen under the bill.

I want to make it very clear that neither Mr. Straight nor myself want to raise any scare possibilities in connection with this bill. We don't think it is directed at anything but Communists. We don't think it is anti-Semitic, anti-Negro, or anti anything else but anti-Communist.

Mr. KEARNEY. These are simply hearings on a particular bill that the committee has not gone into executive session to revise, but if the

committee saw fit to revise the bill to meet your objection, would you then be in favor of the legislation?

Mr. NIKOLORIC. I would be against it. I can't speak for Mr. Straight.

Mr. KEARNEY. You are against any legislation on this subject?

Mr. NIKOLORIC. I think the present laws are adequate. In spite of what Senator McCarthy says, we have found only one spy, Judith Coplon, and there is some doubt—I don't doubt she is a spy, but she was encouraged by the State Department to take those papers.

Mr. KEARNEY. There is always a question in the minds of some people as to whether a party who is found guilty was framed.

Mr. NIKOLORIC. I didn't say she was framed.

Mr. KEARNEY. Having been a district attorney for many years, I don't know many criminals who were ever tried and convicted who were not absolutely innocent.

Mr. NIKOLORIC. I followed the Coplon case with a great deal of interest, and I am not in sympathy with any espionage agent, but there certainly was an effort on the part of the Department to encourage her to take this stuff up to New York when they set a trap. She took it and she is guilty, but they had to work hard.

Mr. KEARNEY. You have to work hard in any case to catch a criminal. That case has not been decided by the court of appeals.

Mr. MOULDER. You are raising a defense of entrapment?

Mr. NIKOLORIC. I am not defending it, but I don't think the Government is riddled by spies. Judith Coplon was the only one caught, and there is some question about how important that was. In my opinion she was a neurotic girl.

Mr. KEARNEY. I don't think our Government is riddled by spies, but I think possibly a good many should be gotten rid of.

Mr. NIKOLORIC. That may be so.

Mr. VELDE. Do you think there was a Communist espionage group in this country during the war, members of which are still in this country and have not been prosecuted?

Mr. NIKOLORIC. I would be very disappointed in Joseph Stalin if he didn't. I would be disappointed if America didn't have espionage agents in Russia. You fellows had me in the Pacific 4½ years, so I don't know what happened here during the war.

Mr. VELDE. I was in the war, too.

Mr. NIKOLORIC. I would be very disappointed in Stalin's ability if there weren't Russian espionage agents here.

Mr. VELDE. I don't care if you are disappointed in Stalin's ability, but if there was an espionage ring in this country, don't you think the members should have been prosecuted?

Mr. NIKOLORIC. They certainly should have been prosecuted. You might put that both ways. I think if they catch our boys they would have a right to prosecute them, too.

(Representative Moulder leaves hearing room.)

Mr. WALTER. The position you take is that under title 18 of the code there is legislation covering every field of espionage activity?

Mr. NIKOLORIC. That is right.

Mr. VELDE. The point I make is that we have not been successful in prosecuting the Communist spy ring, and I think this legislation is one means by which we can assist our Government in combating

this espionage ring. If we had this bill, which would require the registration——

Mr. NIKOLORIC. What you are doing here, Mr. Velde, at the risk of seeming impertinent, you are assuming that this bill is going to require some spies to register. What happens to the thousands of others who are not spies?

Mr. WALTER. And the spies are the last persons who will register.

Mr. NIKOLORIC. Certainly.

Mr. VELDE. We don't expect them to register, but this bill will enable us to prosecute them for failure to register.

Mr. NIKOLORIC. This doesn't have anything to do with espionage.

Mr. VELDE. The Communist Party would have to register.

Mr. STRAIGHT. Would you expect the majority of Communists to register? I wouldn't.

Mr. VELDE. I doubt it.

Mr. STRAIGHT. It seems to me the Communist Party would merely go a little deeper underground if this bill is enacted. The only way to root it out is destroy its base. We think they could pose as martyrs and confuse the issue.

Mr. VELDE. If you could suggest a way to handle this problem without legislation, I would be more than willing to vote against this bill, if we had some way of handling this problem.

Mr. KEARNEY. With respect to the section on treason, I am in favor of revising that particular section to make it apply to peacetime treason. As it is now, it only deals with enemies, and in peacetime we have no enemies.

Mr. NIKOLORIC. That is certainly a possibility. One thing that upsets me about this bill, I do not see a single provision in this bill that will accomplish what I consider a very lofty purpose. I don't like espionage agents floating around Washington any more than you do, but I don't see a single provision that would take care of that.

Mr. VELDE. I tried to explain this bill could act as a tool. We recognize that the espionage ring in this country, the most serious one, is directed by the Communist Party through the Russian Embassy and consulate here. If we require the registration of these Communist Party members and they fail to register, then they are liable for prosecution. It is one way of bolstering our espionage laws that we have now.

Mr. NIKOLORIC. If I were a Communist and an espionage agent and this bill passed, I would sever my connection, as far as a label is concerned, with the Communist Party. I wouldn't have to register. I would just go underground.

Mr. VELDE. But if you are still determined to be a member of a Communist-front group or a subversive, you are still required to register.

Mr. WALTER. Anything further?

(No response.)

Mr. WALTER. Thank you, gentlemen.

Mr. TAVENNER. Mr. Chairman, a letter has been received from Prof. William G. Rice, a professor of law at the University of Wisconsin. He expresses his regret at not being able to be here, but I want to incorporate his letter and argument in the record.

Mr. WALTER. Without objection it will be incorporated in the record at this point.

(The letter above referred to is as follows:)

UNIVERSITY OF WISCONSIN,
LAW SCHOOL,
Madison, March 27, 1950.

CHAIRMAN AND MEMBERS OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES,
House of Representatives, Washington, D. C.

GENTLEMEN: If it were possible for me to travel to Washington at this time, I would have asked to testify before your committee on H. R. 7595. Since it is not possible and since I believe my experience in teaching and practicing law and working for several years for the Government justify me in requesting you to ponder my views, I beg leave to present this statement for your consideration and records.

I am opposed to H. R. 7595 unless it is radically amended. While procedurally it is better than the Mundt bill that passed the House in the Eightieth Congress, I consider it on the whole bad legislation.

Subsections (b) and (c) of section 4 are either unnecessary or inadequate. I suspect they are unnecessary because the offense is provided for by other statutes. But if a new statute concerning disclosure of classified information is needed, it should clearly apply to unauthorized communication to all persons. That is, the limitation of lines 6–10 and 19–22 on page 9 should be struck out so that the prohibitions cover communications to whomever made and by whomever obtained.

This makes it unnecessary in subsection (f) to mention subsection (c). In subsection (d) the penalty of ineligibility, it seems to me, should not be automatic, but should be imposable at the discretion of the court.

The apparent purpose of the rest of the bill is to cause disclosure of Communist activity. The method chosen largely defeats this purpose, for the bill provides penalties for disclosure as well as for nondisclosure. If disclosure is desired, then rewards—or at least no legal penalties—should be attached to disclosure. For example, sections 5, 6, and 12 should be reversed. Contributions to registered organizations should be deductible for income tax purposes (if the organization is charitable, educational, etc.) and members should be in the position as other persons who seek jobs or passports. Registration might be even rewarded as by providing that a registered party may not be barred from the ballot in any State, which would facilitate disclosure of Communist leaders and plans.

However, if the purpose is not to cause disclosure, but to penalize Communist organizations and persons, the statute is muddled. The straightforward way would be to set up a criminal procedure by which individuals should be tried by jury and if found guilty should be punished (as under sec. 4). If imprisonment or fine is too severe a penalty, it would not be "cruel or unusual punishment" to deprive them only of certain rights (passport, public employment, vote) as felons are now deprived while they are imprisoned and thereafter. I am far from sure that such a law would be constitutional. But it would be more likely to pass the courts than this bill. For what is set up here is not a normal trial of individuals for a public crime according to the law of the land, but a semipenal administrative adjudication resulting in penalties due to association.

If limited to public employment, the plan is, however, basically proper for some administrative organ has to decide whether a person should or should not be employed. But it should be noted that the present system of determination by the Attorney General that certain organizations are subversive provides evidence against their members, while the bill before you creates a bar against members of Communist political organizations (even against their serving as dogcatchers) but does not change the rule as to members of Communist-front organizations.

The pending bill entrusting to a Board, rather than to a presenting officer, the decision on whether organizations are "Communist," with full provision for hearing and review, is an improvement upon our present system. But the fact of membership in either type of organization ought to remain only evidence (not a bar) against applicants for employment. Decision as to employment should always be on the basis of individual character and ability—like decision as to innocence or guilt of crime.

I am much dissatisfied with section 6. The State Department today can deny passports for good or bad reasons and the applicant has no recourse. In my opinion this authority has been abused. To meet this injustice I believe Congress should provide recourse to an administrative agency outside the State Department for persons who desire to have a public investigation of the grounds

for denial or revocation of passports. Moreover, I think it is unwise absolutely to bar members of Communist political organizations from holding passports. Frequently we wish to facilitate their leaving the country voluntarily. But clearly each case should be decided on its merits, though the fact of membership in a Communist organization may properly be weighed in deciding on their worthiness to travel abroad under United States protection. Enlistment by Americans in organizations that are tied to other foreign governments (Spain, Israel, Vatican) also should be cause for investigation but not for automatic veto.

I doubt whether enough is gained by requiring the filing of all names of contributors to Communist organizations and all members of Communist political organizations, to warrant the elaborate reporting required by section 7. Would not the sort of reports required of labor unions by the Taft-Hartley Act be sufficient? I have not considered this question from enough angles to have reached a firm opinion.

The most fundamental objection to the bill is that the standards it lays down are so vague that a partisan board could use its power to cripple any group that it disliked. For instance, a Senator McCarthy in such a position could rule that since a certain organization of which Judge Kenyon or Professor Jessup is a member has taken a position, let us say, in opposition to or in support of the admission of some applicant state to membership in the United Nations, which position is the same as that of the Soviet Union, therefore the organization is a Communist political organization and must so label all its public statements, and Judge Kenyon or Professor Jessup may not be employed by the United States or obtain a passport for any purpose. For the test "the extent to which its views and policies do not deviate from those of such foreign government" can easily be used by a board containing two Senator McCarthys to debilitate such an organization. Operated by appointees of an autocratic president like Peron, the board could easily find ground to list as "Communist" any opposition party and to make the listing stick with the courts, unless they concluded, as seems not unlikely, that the whole act is unconstitutional as an invasion of freedom of speech.

With deletion of this nondeviation test of "Communist" and omission of the rubber words "the extent to which" from all the tests, I would favor the transfer of the function now performed by the Attorney General to the proposed board.

Finally, it is extravagant to pay $12,500 apiece to three men for doing the very light job that the bill assigns to them. When one compares this load with that of most administrative agencies, one wonders whether self-respecting men of high quality could be found who would accept so easy an assignment. Yet obviously it is a very responsible job requiring high quality and expensive talent, and one that can be better done by three persons than by one. I suggest, therefore, that the Board be given additional duties. I should think it would be not inappropriate, for instance, to give to such a board review of the State Department's refusals and cancellations of passports of Americans (the question of nationality is adequately covered by the Nationality Code, 8 U. S. C. A. 903) and perhaps of its refusals and cancellations of visas of aliens within or seeking to enter the United States. Also, once its heavy initial duties are completed, the Loyalty Review Board might be merged with the proposed Subversive Activities Control Board. But I am sure that Congress would be wasting the public money to set up the latter Board with no duties except those set forth in the bill before your committee.

Sincerely yours,

WILLIAM G. RICE, *Professor of Law.*

Mr. WALTER. Professor Freeman, will you raise your right hand and be sworn. You solemnly swear the testimony you are about to give on the matter in hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FREEMAN. I so affirm.

TESTIMONY OF HARROP A. FREEMAN

Mr. TAVENNER. Will you state your full name for the record?

Mr. FREEMAN. Harrop A. Freeman.

Mr. TAVENNER. Are you a representative of the Society of Friends' Committee on National Legislation?

Mr. FREEMAN. Yes, sir.

Mr. TAVENNER. Professor Freeman, it has been the policy of the committee to ask each witness appearing on subversive matters whether he is now or ever has been a member of the Communist Party. I would like to ask you that question.

Mr. FREEMAN. I am not now nor have I ever been a member of the Communist Party. For over 20 years I have been affiliated with the Republican Party. I haven't always voted the straight ticket, but I guess I qualify as a Republican.

Mr. KEARNEY. The gentleman qualifies.

Mr. TAVENNER. Do you have a prepared statement?

Mr. FREEMAN. I do not.

Mr. TAVENNER. Do you desire to be heard on this bill?

Mr. FREEMAN. I would like to be heard very briefly; yes.

Mr. TAVENNER. Proceed.

Mr. FREEMAN. I happen to be one of those things that was just mentioned, a professor of law, but I hope you don't hold it against me because I am also a practicing attorney and have practiced 25 years.

I have examined H. R. 7595 with a great deal of interest, particularly as it applies to the Society of Friends. The Society of Friends are Quakers. I suppose they outrun this committee in being against violence and the violent overthrow of government. They go so far as to be against violence even in the protection of lawful government, and surely they are against violence to overthrow the Government.

The thing that seems to me to be basically objectionable in this statute is the extent to which it departs from the whole philosophy of our Government; and that, I would say, is also the philosophy on a religious basis that the Society of Friends is based on, the concept you cannot coerce people in their beliefs, that the only way we can have a democratic form of government is by persuasion.

The Society of Friends has always stood out against government attempts at coercion of beliefs. I think the Supreme Court has frequently referred to our habits of refusing to doff our cap to the king and things of that sort.

Because of our religious belief, we believe even men you class as enemies should be treated the way you would treat friends. We feel we could easily be brought within some of the provisions of this act. The Society of Friends nationally advocates an attempt to achieve friendly relations with Russia. The Friends Society has issued a pamphlet on the basis on which we could get on a friendly basis with Russia. This pamphlet was published by the Yale University Press.

We also take a position on the FEPC, on which issue the Communist Party also takes a position, and in many instances the position may be the same.

Mr. WALTER. Do you think under the provisions of the bill, because the Society of Friends takes positions similar to those of the Communist Party, it might be deemed guilty of violation of the act?

Mr. FREEMAN. I think it might be so charged under section 14 where it states the different things that would be considered. Certainly we would run parallel with the Communist Party on a good many things, on disarmament, for example. We have advocated disarmament for years and years. The fact the Communist Party advocates disarmament, we would run parallel at this point.

(Representative McSweeney enters hearing room.)

Mr. FREEMAN (continuing). I think you will find that is true of a good many religious bodies, who hold to their position regardless of whether the Communist Party position runs parallel or not.

The Society of Friends happens to be the religious group that might most quickly be considered, because we are more strongly antimilitarist than other groups, and believe there is another way. Those things are so long historically our position that I don't think it is necessary to restate them.

It seems to me further, as a lawyer, that the statute is certainly of very questionable constitutionality. It runs counter to the whole theory of the free-speech cases, beginning with the Holmes dissent in *Whitney* v. *California*, where he said only by a free exchange of opinions can you possibly support a democratic government; and it seems to me we certainly cut down on the theory set forth in that group of cases, without bothering to cite them.

It seems further to me that it runs up against the registration cases. There have been four or five registration cases that have gone to the United States Supreme Court. The only one involving Communist registration is 9 (h) of the Taft-Hartley law, where the Supreme Court said you can require registration in the Taft-Hartley law because in that law Congress gives the labor union a privilege and has the right to attach a condition to it; but the Court said if you were attempting to legislate on freedom of speech the same reasoning would not apply. The Collins case in Texas and the Hill case in Florida also went to the Supreme Court, in both of which the Supreme Court held the registration provisions violated the Constitution.

You do have one case in which the Supreme Court of the United States has upheld registration by a State, the New York case involving the Ku Klux Klan and secret societies of 1929. In that case the Supreme Court said you had an organization which was incorporated under the State law, with control over the incorporation, and the fact they met at night, wore masks, and so forth, gave control, so that they could be required to register. Apart from that, the Supreme Court has never upheld any registration case which was said to infringe on freedom of speech and freedom of the press.

As of the present time, the Supreme Court has said that the Communist Party was a legal party and Congress could not legislate them out of existence. What is attempted here is to do indirectly what the Supreme Court has said you could not do directly.

I am aware of the problem you have, but if what we are trying to do is preserve the kind of government we have here, the cure may be worse than the disease. We also have to recognize that, as I have heard the speakers before me state, whoever drafted this bill did attempt to give great protections so that it would not run into the difficulties of constitutionality.

For example, I teach administrative law, and I know from the provisions regarding quantity of evidence it is fairly clear that you are attempting to make some additional protections in the area of due process; but it still seems to me, having done everything you can, you still violate the basic requirements of constitutional law.

For example, I notice under the statute a man's name could be let out before has been cleared, and by doing that he is as effectively branded as though you had a final order saying he is a Communist or Communist affiliate. If this is criminal in nature, and the Supreme

Court has said depriving a man of his job is punitive, you are attempting to change the general rule of common law to the general rule of civil law.

Mr. WALTER. Not general but limited rule.

Mr. FREEMAN. Yes. I am inclined to agree with Mr. Nikoloric that you have attempted to give the protection you feel must be given and still make the law operative. It simply goes to prove that this kind of statute cannot be enacted without infringing on some of the constitutional rights which need protection.

I would like to speak to one other thing. Our whole theory of government is that you need to protect those whom we might call the timid, the men who hang around the fringe of the Democratic Party or the Socialist Party or whatever party it might be, not the men who get out and work day after day for the cause. I am quite certain if you enact this kind of law the timid from every political and nonpolitical organization which takes a stand on any of these matters similar to the stand the Communist Party takes will gradually move out of the organization.

(Representative Velde leaves hearing room.)

Mr. FREEMAN (continuing). Someone asked the question of the previous witness as to the effect on organizations of the requirement to give financial reports. As Mr. Walter has said, there are a group of cases, particularly in the area of commerce, where we require political organizations to file annual financial reports.

I think, on the other hand, if you are asking a charitable organization to file a financial statement which would include a list of contributors, so far as getting contributions for religious organizations is concerned, that would put an end to it. I think one organization of the Methodist Church was put on the subversive list.

Those are the points to which I wanted to address my remarks, I agree in fact with the statement that was filed by the two previous witnesses on the unconstitutionality of the statute. I do think it is of very doubtful constitutional validity.

Mr. WALTER. Mr. McSweeney.

Mr. MCSWEENEY. I am sorry I came in so late, but I do appreciate your very fair statement.

Mr. WALTER. Mr. Kearney.

Mr. KEARNEY. I have no questions, but I want to thank you for a very comprehensive and clear statement.

Mr. TAVENNER. There is one point I would like to clear up. You made reference to an organization of the Methodist Church having been declared subversive. I wanted to correct you on that or give you the opportunity to correct it.

Mr. FREEMAN. At this point I have to say that was merely the report as I noticed it in the newspapers, and it was sometime past, but as I recall one of the youth organizations of the Methodist Church was listed on the first list of the Attorney General. That is my recollection of the newspaper report. I am sorry I can't make it more definite.

Mr. WALTER. Thank you very much, Professor.

The meeting will stand adjourned.

(Thereupon, an adjournment was taken.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

TUESDAY, APRIL 4, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The committee met, pursuant to notice at 11 a. m. in room 226, Old House Office Building, Washington, D. C., Hon. Burr P. Harrison presiding.

Committee members present: Representatives Burr P. Harrison, John McSweeney, Morgan M. Moulder [arriving as indicated], Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; John W. Carrington, clerk; W. Jackson Jones, investigator; A. S. Poore, editor.

Mr. HARRISON. The committee will come to order.

Let the record show that there are present Messrs. McSweeney, Velde, Kearney, and Harrison.

Mr. Counsel, you may proceed.

Mr. TAVENNER. Mr. Chairman, we are ready to proceed again with the legislative hearings which have been held here frequently. I would like to call Mr. Thomas E. Harris.

Mr. HARRISON. Mr. Harris, will you hold up your right hand. You solemnly swear that in the testimony you are about to give you will speak the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HARRIS. I do.

TESTIMONY OF THOMAS E. HARRIS

Mr. TAVENNER. You are Mr. Thomas E. Harris?

Mr. HARRIS. That is correct. I am assistant general counsel of the Congress of Industrial Organizations, and I appear here on its behalf.

I have prepared a written statement. If it is agreeable to the committee, I would like to submit that statement for the record and orally only to summarize or paraphrase it.

Mr. HARRISON. It is so ordered. The statement will be submitted at this point.

(The statement above referred to and submitted by the witness is as follows:)

STATEMENT OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS IN OPPOSITION TO THE NIXON AND WOOD BILLS (H. R. 7595 AND 3903), SUBMITTED BY THOMAS E. HARRIS, ASSISTANT GENERAL COUNSEL

INTRODUCTORY

The Congress of Industrial Organizations opposes the Nixon bill (H. R. 7595) as it has opposed its various predecessors. And it likewise opposes the Wood bill (H. R. 3903).

Our reasons for opposing these bills may be simply summarized. We do not think these bills are necessary. We believe that communism can be, and is being successfully combated in the United States without resorting to measures as extreme as those provided in these bills. And we think that these bills are not only unnecessary but are dangerous: That they are wholly irreconcilable with the freedom of speech, thought, and belief which are the essence of a free society.

I. NATURE OF COMMUNIST THREAT

In our view such measures as the Nixon bill entirely misconceive the nature of the Communist threat to the United States. The ultimate factual assumption of these bills is that there is actually grave danger that the Communist movement in this country, acting conspiratorially and through front organizations, will overthrow the Government of the United States.

Such a fear, we think, is absurd. It credits the American Communist movement with a strength it does not begin to possess. And it shows a woeful lack of faith in the strength of American democracy.

The factual assumptions thought to justify the Nixon bill are set out in detail in the bill itself, as findings. The ultimate finding that the Communist movement threatens to subvert our democratic society is based on several preliminary findings, some of which we think are plainly unrelated to fact.

Section 2 (7) declares that the Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through camouflaged Communist-front organizations. Section 2 (10) declares that "the most powerful existing Communist dictatorship has, by the traditional Communist methods referred to above * * * already caused the establishment in numerous foreign countries, against the will of the people of those countries," of Communist dictatorships. Then follows, in section 1 (11), the ultimate finding that "the recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions * * *."

These findings, as a description of how the Communists have come into power in various countries in recent years, bear little relation to the facts of history. Communist control of Poland, Hungary, Bulgaria, Rumania was not brought about by conspiracy and the use of front organizations. It was brought about by the Soviet army, which occupied those countries and established Communist governments. In Czechoslovakia and China it was not underground conspiracy or front organizations which enabled the Communists to seize power. In Czechoslovakia the Communists came into power as a minority government. The Communists suppressed all rival political parties by force and terror. Undoubtedly, a major reason why the Communists were not resisted by force was the presence of Soviet armies on the Czech borders. In China the Communists came to power as the result of a successful military campaign by the Communist armies.

Thus, there is nothing in recent experience abroad to suggest that the world Communist movement is able to overthrow governments by conspiratorial methods and the use of front organizations. And there is nothing in our experience in this country to suggest that there is any real danger of Communists overthrowing the government. The very use of front organizations is a confession of weakness, since, as the Nixon bill states, the purpose of using such organizations is to enlist the support of persons who would not support Communists or Communistic programs. Parenthetically, it may be pointed out that if secret and conspiratorial methods of operation are regarded as especially dangerous, that is not a reason for passing the Nixon bill, but for rejecting it. Mr. J. Edgar Hoover has pointed out that such measures as the Nixon bill would drive the

American Communist Party underground, and make more difficult the FBI's task of surveillance.

There is no indication that the Communist movement in America is gaining strength, and every indication that its power is receding, and has been ever since 1932. In Presidential elections, the Communist Party and its predecessors increased their strength from 33,000 in 1924 to 49,000 in 1928 and to 103,000 in 1932. In 1936, however, the Communist vote declined to 80,000, and in 1940 it was down to 49,000. The Communists have not run their own candidate for President since 1940, but have endorsed candidates of other parties, so that no figures are available as to the vote polled by the Communists in 1944 or 1948. However, there would seem to be little question that the strength of the party in this country has continued to diminish throughout that period, due to prosperous conditions here, more widespread understanding of the nature of the Communist movement, and, in recent years, to increasingly bad relations between this country and Russia. Mr. Matthew Cvetic, who recently appeared before this committee, estimates the present strength of the American Communist Party at forty to fifty thousand.

This situation certainly does not seem to call for new sweeping anti-Communist legislation, which would not only deny civil rights to Communists but would put at hazard the civil rights of everyone else. The Communists are steadily losing strength in this country. They constitute no conceivable threat to the stability of the Government, except in the possible eventuality of war with Russia.

It is no doubt true that the Communist Party serves as a recruiting ground for Russian spies. But the way to deal with espionage is by punishing spying. If the present statutes against spying are defective, the proper remedy is to amend them, and the House recently passed a bill for that purpose—H. R. 4703. That bill was passed at the request of the Department of Justice, to correct what the Department thought to be weakness in the espionage laws. The Department has not requested that the Nixon bill be passed, and has repeatedly expressed grave doubts as to the constitutionality of such bills.

II. ADEQUACY OF EXISTING LAW

From the strong pressure both in the Eightieth Congress and the present to pass a bill like the Nixon bill, one might suppose that there were no existing law dealing with the supposed danger, or that the statutes now on the books were in fact inadequate to meet the supposed peril.

Such is not the case.

Since 1790 this country has had on the books a law defining and punishing treason. While this law defines treason narrowly, it is worth remembering that that narrow definition was written into the Constitution itself by men who were familiar with the oppressive use which had been made of the treason laws by the British Government. Our Constitution was adopted only 6 years after this country had secured its independence, and at a time when it was surrounded by a hostile British Empire to the north and a hostile Spanish Empire along the entire southern and western frontiers. Powerful Indian tribes within our frontiers were yet unsubdued. Even in that perilous situation our forebearers preferred to define treason narrowly, and take the chance that this Nation could defend itself against enemies from within, rather than risk the oppression by government which British experience showed might stem from a broader treason law.

From the bills which are proposed in this Congress, one can only conclude that either this Nation had grown smaller, weaker, and less secure since 1790, or that our devotion to freedom and civil liberty is less than that of our ancestors.

The criminal statutes also have sections dealing with "rebellion or insurrection," "conspiracy to overthrow * * * or to destroy" the Government by force, and a very broad provision making it criminal to advocate or teach the desirability or propriety of overthrowing the Government "by force or violence."

It was under this last provision—which is known as the Smith Act, and was enacted as part of the Alien Registration Act—that the 11 Communist leaders were tried and convicted in New York. If the constitutionality of the Smith Act is ultimately sustained in that case, it is most difficult to see how there can be any possible need for the Nixon bill.

The report of this committee last year, reporting out the Mundt-Nixon bill, stated that existing legislation was inadequate because the Communist Party operated secretly. This statement is a *non sequitur*. Secrecy may increase the problem of detection, but can hardly be met by passing more laws.

Moreover, the FBI does not seem to have found it impossible to penetrate the Communist Party. Mr. Raymond Whearty, of the Department of Justice Criminal Division, recently stated that the Department of Justice has 12,000 prosecutions awaiting the outcome of the trial of the 11 Communist leaders, and that it could prosecute thousands more except that it must protect its confidential informants. It is thus not surprising that the Department of Justice sees no need for legislation such as the Nixon bill. Indeed it has stated that such legislation would materially increase the problem of law enforcement.

Finally, the Criminal Code contains elaborate provisions requiring the registration of certain organizations. These organizations include "every organization subject to foreign control," which is defined as including any organization which "accepts financial contributions * * * or support of any kind, directly or indirectly, from, or is affiliated, directly or indirectly, with, a foreign government, or * * * a political party in a foreign country, or an international political organization." It requires the registration of any organization which engages both in political activity and in "civilian military activities," and the latter is defined as including, among other things, any "form of organized activity which in the opinion of the Attorney General constitutes preparation for military action." It requires the registration of every organization, the purpose or aim of which is the "overthrow" of the Government by force or violence. Failure to register is punishable by a fine of $10,000 and an imprisonment of 5 years.

These provisions obviously cover exactly the same subject matter as does the Nixon bill, and even utilize approximately the same mechanism. If the existing provisions are in any particulars defective, it would appear that the appropriate course would be to amend them, not to enact a new law, in part duplicating, and in part conflicting with the existing legislation.

As regards the Wood bill, as the Department of Justice has already pointed out, the loyalty of Federal employees is now subject to scrutiny under the loyalty program administered under Executive order. Employees of private contractors who will have access to restriced information are likewise required by the Atomic Energy Commission and the Department of Defense to secure loyalty clearance. We agree with the Department of Justice that there is, therefore, no need for the Wood bill.

I would like to make it clear that we are not endorsing all of the legislation that is already on the books. All that we are saying is that, with such provisions already on the books, there is no occasion for additional legislation.

III. THE NIXON AND WOOD BILLS INFRINGE CIVIL RIGHTS

We have sought to show that there is no need for the Nixon or Wood bill. But we do not regard those bills as merely harmless or unnecessary. They violate civil rights whose protection is basic to our democratic system.

At this point, we would like to call the attention of this committee to the specific provisions of the Nixon and Wood bills which, in our judgment, violate constitutional rights of due process, freedom of speech, press, and assembly.

1. *The bills regulate opinion, not conduct.*—A very basic objection to both of these bills is that their purpose is to police and regulate not action or conduct, but thought and expression. Under these bills, organizations and individuals are punished, restrained, and regimented solely on the basis of political opinions, rather than on the basis of overt acts of disloyalty.

It has been traditional in this country, and in other democratic countries, to allow the widest possible freedom of thought and expression. Belief and speech hostile to the existing system of government is not only tolerated, but is protected by our Constitution, unless it takes the form of advocating some course of conduct in circumstances such as to make it probable that unlawful action will in fact ensue. In the language used by Mr. Justice Holmes in first enunciating what has since been known as the clear and present danger test, freedom of speech can be restricted only if "the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils the Congress has a right to prevent" *Schenck* v. *United States*, 249 U. S. 47, 52). More recently, in *Bridges* v. *California* (314 U. S. 252), the Supreme Court said (p. 263): "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

And still more recently, in *Thomas* v. *Collins* (323 U. S. 516, 530): "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

In the Eightieth Congress, the sponsors of the Mundt-Nixon bill sought to justify its restriction of freedom of thought, speech, and assembly on the ground, among others, that the bill proceeded only against organizations, and did not prevent individuals from maintaining or advocating abstract views concerning the subjects dealt with in the bill. But if freedom of thought and freedom of speech has any meaning, particularly in the political field, it must necessarily include the right to create and work through organizations. For, under the political systems which have developed in the democratic countries, effective political action means group action—action through political parties, labor unions, and other associations.

The right to create, to solicit others to join, and to act through such organizations is, therefore, protected by the Bill of Rights. It is the form which the freedom of assembly of earlier times takes in a more populous country and a more complicated society. Such groups often afford the only effective vehicle for the exercise of free speech. The Supreme Court has specifically held that the right to solicit others to join organizations is protected by the first amendment. It said:

"It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights * * * and therefore are united in the first article's assurance (*Thomas* v. *Collins*, 323 U. S. 516, 530)."

If, therefore, the restrictions which this bill places upon freedom of thought, speech, and assembly can be justified under our Constitution, or reconciled with democratic principles, it cannot be on the basis that organizations rather than individuals are regulated. The only justification would be some overwhelming necessity for the legislation. We submit that no such necessity exists.

2. *The bills threaten the existence of all progressive organizations.*—The Nixon bill deals with two types of organizations: Communist political organizations and Communist-front organizations.

A Communist political organization is defined in section 3 (3) as having "some, but not necessarily all, of the ordinary and usual characteristics of a political party," and which (a) is controlled by the foreign government or organization controlling the world Communist movement, and (b) operates primarily to advance the objectives of that movement. However, we are at a loss as to why this definition is included in the bill, since it does not seem to be controlling for any purpose.

For section 13(a) of the bill creates a Subversive Activities Control Board, which is to determine whether an organization is a Communist political organization. In making this determination, the Board is not referred to the definition in section 3(3), but is to take into consideration a long list of factors enumerated in section 14(e). These include the extent to which the organization's policies are formulated to effectuate the policies of the foreign government or organization controlling the world Communist movement; the extent to which its views and policies do not deviate from those of such foreign movement or organization; the extent to which it sends members to any foreign country for instruction in the principles of the world Communist movement; the extent to which it fails to disclose or resists efforts to obtain lists of its members, and so on and so on. There are eight numbered paragraphs enumerating considerations of this type. One of the paragraphs has numerous subdivisions. The Board is directed to take all of these factors into consideration, but is not told what weight it shall give to any particular factor, or even that it must find the existence of a certain number of these factors before concluding that an organization is a Communist political organization. It is, therefore, apparent that an organization may be labeled as a Communist political organization solely on the basis of ideas and opinions, rather than on the basis of illegal acts.

The provision in the bill that resistance to efforts to obtain membership lists is a hallmark of a Communist political organization is particularly objectionable to labor organizations, which have learned through long experience that the submission of such lists is the first step to a blacklist through which an organization may be completely destroyed.

A Communist-front organization is defined in section 3(4) as any organization which is either under the control of a Communist political organization, or is primarily operated for the purpose of giving support to a Communist political organization, a Communist foreign government, or the world Communist movement. This definition also seems to be meaningless, since the Subversive Activities Control Board is again, in section 14(f), furnished with a list of entirely different criteria which it is to take into consideration in determining whether any organization is a Communist-front organization.

These criteria are the identity of the persons active in the management of the organization "whether or not holding office therein;" the sources of its support, financial and otherwise; the uses made by it of its resources and personnel, and the extent to which the position taken by the organization from time to time on matters of policy does not deviate from the position taken by any Communist political organization. Here again, the Commission does not have to find that all or any stated number of these factors exist.

Thus, under this bill, if a few Communists are active in connection with a labor organization, even though they do not hold office, that fact alone could furnish the basis for a finding of the Subversive Activities Commission that the organization is a Communist-front organization.

The proposed bill could very easily condemn an organization as illegal solely because its policies happen to coincide with those of the Communist Party. Thus, support by a labor organization of objectives also supported by Communists, such as the abolition of the poll tax, enactment of an adequate housing program, and the protection of civil rights, could, under the standards proposed by the bill, furnish the basis for the conclusion that the organization is a Communist-front.

Under these provisions, not only labor organizations but other progressive organizations could be branded as subversive and destroyed. The CIO is familiar with the indiscriminate use of such terminology by the House Committee on Un-American Activities. Both CIO and CIO-PAC have been repeatedly and wrongfully denounced as Communist, Communist-front, and totalitarian organizations. In its 1944 report, the House Un-American Committee denounced CIO-PAC as representing "a subversive Communist campaign to subvert the Congress of the United States by its totalitarian program." There is no particular reason to suppose that the Subversive Activities Control Board set up in this bill would be any more responsible or any less reactionary than this congressional committee has been.

The Nixon bill is not just another routine measure. This bill is in fundamental conflict with our constitutional form of government and with the premises of a democratic society.

If the Nixon bill shows an indifference to civil rights, the Wood bill flaunts them even more callously. It would give the Attorney General the power, by fiat, without a hearing, and subject to no review whatever, to destroy any organization. For the Wood bill would make it a crime for any Federal employee, or any individual in private industry employed in connection with the performance of any national defense contract, to be a member of or to support any organization designated as subversive by the Attorney General. That an organization so designated by the Attorney General could not survive under the bill is a point which scarcely needs to be labored.

The Wood bill thus gives the Attorney General absolute power to determine what organizations may exist. We have no hesitation in stating that that proposal is nakedly totalitarian.

We think it is bad enough that the Attorney General now lists organizations as subversive without any sort of hearing or any opportunity to the organization to disprove the charge. We hope that the Supreme Court will supply this deficiency by holding that an organization listed as subversive is entitled to judicial review.

But what the Wood bill would do would be much worse. At the present time, membership in organizations on the Attorney General's list is treated as evidence pointing to possible disloyalty, but as evidence which may be rebutted. As the Department of Justice has correctly pointed out, there is a vast difference between that and making mere membership a crime.

There is, we think, no question whatever but that the Wood bill would be held unconstitutional. The Supreme Court has squarely held that mere membership in the Communist Party may not be punished (*DeJonge* v. *Oregon*, 299 U. S. 353).

3. *The penalty provisions of the Nixon bill are vague, oppressive, and unconstitutional.*—The Nixon bill requires Communist political organizations and Com-

munist-front organizations to register as such, and to file certain information with the Attorney General. The bill requires both types of organizations to file a list of all officers and full financial statements of receipts and expenditures. In addition, Communist political organizations are required to submit a full list of members, and any member whose name is not submitted is required to register himself. All of these data are to be available for public inspection.

Both Communist political organizations and Communist-front organizations are required by the bill to label all mail intended for more than one person as: "Disseminated by ------, a Communist organization." They are also required to initiate all radio broadcasts which they sponsor with this announcement: "The following program is sponsored by ------, a Communist organization."

An additional disability which is imposed upon Communist political organizations and Communist-front organizations is the loss of tax exemptions which they would otherwise enjoy.

Where an organization is ordered to file and register, and fails to do so, a fine from $2,000 to $5,000 may be imposed. Where the failure is due to the decision of a particular executive officer, the prescribed punishment for such an officer is a fine of from $2,000 to $5,000 or imprisonment from 2 to 5 years, or both. Each day of failure to register constitutes a separate offense.

In the Eightieth Congress the sponsors of the Mundt-Nixon bill, which was the predecessor of this bill, argued that it was a mild measure because it did not outlaw organizations labeled as "Communist political organizations" or "Communist-front organizations." Such a claim is completely misleading. There can be no question that the registration requirements amount to destruction. This is so for the obvious reason that organizations which are made to register are subject by legislative fiat to the stigma of disloyalty. Any claim that this bill does not destroy or outlaw these organizations reduces itself to the assertion that the bill compels them to commit suicide, rather than destroys them outright.

Of course, it is obvious that if these organizations enjoy a right under the Constitution to exist and to carry on their activities through the exercise of civil rights, then that right may not be impaired even by a registration requirement—not to speak of the mail and tax disabilities which are likewise written into the bill. In *Thomas* v. *Collins* (323 U. S. 516, 539), the Supreme Court said: "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and free assembly."

The blacklist which would result from registration would in itself be sufficient to destroy an organization. For there can be no question but that persons listed as members of "Communist political organizations" would thereafter be unable to secure jobs. Indeed the labeling last year of certain Hollywood writers as Communists led their employers to breach written employment contracts. Such a blacklist would likewise be possible in the case of a Communist-front organization, even though such organizations are not required to submit membership lists, since they are required to disclose the sources of their funds, and that information would serve to identify contributors to the organization.

The bill carries certain additional penalties specifically directed against members of the condemned organizations. Thus, under the bill, it is unlawful for any member of a Communist political organization to hold any nonelective office or employment with the Federal Government or apply for a passport. Any Government official who appoints or employs any such individual, or who issues a passport to such an individual, is likewise guilty of a violation of the law. Penalties for violation of these provisions are a fine of not less than $2,000 nor more than $5,000, or imprisonment for not less than 2 or more than 5 years, or both.

Section 4 of the bill appears to apply both to organizations and individuals. This section of the bill makes it illegal for any "person," defined elsewhere as either an individual or organization, knowingly to conspire with any other person "to perform any act which would substantially facilitate" the establishment in this country of a "totalitarian dictatorship" under foreign domination. A violation of this section is punishable by fines up to $10,000, imprisonment up to 10 years, or both.

One objection to this provision of the bill is that it does not require that the action which would aid the Communist movement be undertaken for that purpose or with that intention, but only that it be done "knowingly." "Knowingly" in criminal statutes has sometimes been interpreted as requiring only a conscious act, and under the strictest construction means only that the defendant contemplated, or should have contemplated, the consequences of his acts.

Suppose, for example, that the United Steelworkers of America, in bargaining collectively with the United States Steel Corp., requests a reasonable wage increase—one needed by the workers to maintain a decent standard of living—and the directors of the corporation reject the request. Certainly it could be said that the rejection of such a request "would substantially facilitate" the establishment of a Communist regime in this country by depriving the workers of a decent standard of living, and creating hostility between labor and capital. The directors of the United States Steel Corp. could thus be indicted and sent to jail under this provision for rejecting the union's demand. On the other hand, the union could just as well be convicted under the bill for putting forward a demand which might tend to create industrial strife and thus aid the Communist Party.

Section 4 of the Nixon bill is not aimed at acts or conduct, which are capable of precise definition. Rather it is the intention of this section to punish as a crime mere advocacy, argument or persuasion, whether or not calculated in the circumstances to lead to the immediate commission of overt illegal acts. As we have already stressed, the Supreme Court has consistently ruled that mere advocacy of ideas, however odious, cannot, under our Constitution, be restrained or punished.

4. *The Nixon bill's procedures ignore common-law safeguards.*—One would expect that a bill which imposes such drastic penalties upon organizations and individuals would scrupulously adhere to the time-honored procedural protections which are the boasts of the Anglo-American legal and constitutional systems. This would include provision for fair trial on the issues before a judge and jury and the application of the usual rule that a defendant in a criminal case is presumed innocent until proved guilty and must be convicted upon evidence establishing guilt beyond a reasonable doubt. If an organization refuses to accept the brand or stigma which the bill would stamp upon it, certain procedural requirements are laid down to permit the Attorney General, not through a criminal proceeding, but through an administrative proceeding, to impose the bill's brand on them. Under these administrative procedures the Subversive Activities Control Board is authorized to make an administrative finding, after a hearing, that the organization involved is a "Communist political organization" or a "Communist-front organization."

The Commission's hearing, like all administrative hearings, is without jury and wholly lacking in those protections to the defendant which would obtain in a criminal trial. The hearing itself is not before a judge but before a Federal board.

It should also be borne in mind that the Attorney General does not merely prosecute the accused organization; he likewise is charged with the task of investigating the organization. In so doing, he is authorized by the law to subpena the books and records of the organization and to compel testimony. Such a provision would, of course, permit the Attorney General a virtually unlimited power of search over the internal affairs and membership lists of such organizations as labor unions.

The bill provides that the findings of the Subversive Activities Commission that an organization is illegal, within the meaning of the bill, may be appealed to the Court of Appeals for the District of Columbia within 60 days. Such a review, of course, would consider only questions of law.

The legislative findings upon which the statute rests, the trial procedure and the review procedure, make mockery of our constitutional guaranties which have been developed for the protection of defendants in criminal cases.

5. *Summary.*—The Nixon bill is a serious threat to our most cherished constitutional safeguards.

It imposes penalties upon association and opinion rather than upon overt actions.

The bill is so loosely drawn that it could impose a black-out upon the civil rights of thousands of individuals who would be driven from progressive organizations out of fear that the vague provisions might be made applicable to them.

Penalties and disabilities are imposed upon individuals, not as a result of unlawful activities but merely upon the basis of affiliation or association. Moreover, the operation of various provisions would permit the creation of a blacklist, so obnoxious to our traditions.

The bill wipes out the fundamental protections for defendants in criminal cases. It substitutes administrative procedure for due process of law.

The definitions of the bill would make it possible for the Attorney General to proceed against labor organizations, and the vague character of the bill's standards would make possible a tremendous expansion of its scope.

At best, the vagueness of the bill affords no security to the fair use of the opportunity for free political discussion. The bill is strewn with terms which have no precise legal meaning and which will force reasonable men to act at their peril. In *Stromberg* v. *California* (283 U. S. 359, 369), the Supreme Court stated:

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the fourteenth amendment."

More recently, in *Winters* v. *New York* (333 U. S. 507) the Supreme Court held:

"A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such statute's inclusion of prohibitions against expressions, protected by the principles of the first amendment, violates an accused's rights under procedural due process and freedom of speech or press."

There can be no question that the Nixon bill is so pervasively vague as to impose broad pressures and restraints upon the exercise of rights of political expression. Moreover, as the Supreme Court has repeatedly pointed out, vagueness in a statute involving civil rights lays the basis for discriminatory and unfair application. Such discrimination is easily directed against minority groups, who, more than other groups, need the shield of constitutional protection.

CONCLUSION

That this country should be considering legislation so repressive of political and civil rights at a time when it is in no real danger from the Communist movement in America is surely little to our credit. Our fears, and the lengths to which it is suggested we should go to soothe them, present an unflattering contrast to the recent conduct of France and Italy. In those nations, which have no such tradition of continuous democratic government as we have, the local Communist Parties possess real strength, or did a short time ago. The Russian armies were and are close indeed to the borders of those nations. Yet neither France nor Italy resorted to any such extreme measure as outlawing the Communist Party or passing repressive legislation. Today the democratic forces in those countries, with the aid of ECA, have gained greatly in strength, while the local Communist movements have lost adherents. If those countries, gravely threatened, could show such devotion to democracy, surely it is not necessary for this Nation, of all countries the most secure from any internal threat, to turn away from its democratic tradition.

Mr. HARRIS. The CIO opposes both the Nixon bill and the Wood bill, as we have opposed the various predecessors of the Nixon bill.

Our reasons for opposing these bills may be fairly simply summarized. In the first place, we don't think they are necessary. We think the Communist movement in America can be combated and is being successfully combated now without resorting to measures which would endanger civil liberties, as we believe these measures would.

In the second place, we think these measures are not merely unnecessary and harmless; we think they violate the Bill of Rights in many respects in that they attempt to regulate thought and are contrary to the traditions of our American society.

As to the nature of the Communist threat to this country, the Nixon bill and the various similar bills which have been under consideration contain rather elaborate statements of fact as to how the Communist movement operates secretively, conspiratorially, and through front organizations to get the support of people who would not support it if they recognized the Communist movement as such. It recites that in numerous foreign countries the Communists have succeeded in taking over power, and that these recent successes in foreign countries constitute a clear and present danger to the United States.

All of that, we think, is a pretty inaccurate description of what is going on abroad. We think it is far too flattering to the Communist

movement. We don't think it has taken over power by conspiracy and the use of front organizations, and we don't think it has come into power by the strength of Communists in such countries as Poland, Hungary, Bulgaria, and Rumania. The Communists did not come into power in those countries by using secretive front organizations, nor by conspiratorial activities. The Soviet armies occupied those countries and established Communist governments. To say the secretive-front organizations of the Communist Party in the United States threaten to take over power is absurd. I would say the United States has never been more secure from internal threat than it is now.

If you look at the figures on the strength of the Communist Party in this country, beginning in 1924 it polled some 33,000 votes in the Presidential election. In 1932 it reached its peak vote of slightly over 100,000. By 1940 it was down to 49,000. The Communists have not run a separate candidate for President since 1940; so, there hasn't been any independent voting of the Communist Party, but there is no reason to believe they have gotten more powerful than they were in 1940. People understand more now than they did then the nature of the Communist movement. Many people fooled in 1940 are no longer fooled. The country is more prosperous now. The Communists reached their peak in 1932 during the depression.

Mr. Matthew Cvetic, in his recent testimony before this committee, estimated the strength of the Communist Party in this country now at 40 to 50 thousand. Surely, no one thinks those 40 to 50 thousand can overthrow the Government? At this time we are trying to strengthen the anti-Communists in France and Italy by arms and other assistance. It is absurd for us to adopt antidemocratic legislation and make a finding that there is a clear and present danger that the Communist movement will overthrow the Government. Thus, factually, we think there is no need for this legislation.

In the second place, there is a good deal of law already on the books designed to cope with any attempt to overthrow the Government of the United States. We have had a law against treason since 1790. We have had laws against seditious conspiracy since 1861. One was passed at the outset of the Civil War. The Smith Act and the Alien Registration Act are broader. The Smith Act, under which the 11 Communist leaders were recently tried and convicted in the Southern District of New York, makes it a crime to advocate the overthrow of the Government by force or violence or by any illegal or unconstitutional means. If the constitutionality of that statute is eventually sustained on appeal, or if the constitutionality of its application in that case is ultimately sustained, it is impossible to see how there is any possible need for the Nixon bill.

The report of this committee last year, when it reported out the Mundt-Nixon bill, said it was necessary because the Communist Party operated secretly. The fact it operates secretly may make the problem of detection more difficult, but that problem cannot be met by passing more laws.

The FBI does not seem to have found it impossible to make detection. Mr. Raymond Whearty, acting head of the criminal division of the Department of Justice, recently said that the Department of Justice has 12,000 prosecutions awaiting the outcome of the appeal of the 11 Communist leaders, and that it could prosecute thousands more but for the desire to keep its confidential informants under cover. If that

is true, they must have the Communist movement under scrutiny from top to bottom.

The Smith Act is also a part of the Alien Registration Act passed in 1938 and amended in 1940, which requires the registration of certain organizations. It utilizes the same mechanism as the Mundt-Nixon bill. It requires the registration of "every organization subject to foreign control," and that is defined as including any organization which—

> accepts financial contributions * * * or support of any kind, directly or indirectly, from, or is affiliated, directly or indirectly with, a foreign government, or * * * a political party in a foreign country, or an international political organization.

It requires the registration of every organization the purpose or aim of which is the overthrow of the Government by force or violence. Failure to register is punishable by a fine of $10,000 and an imprisonment of 5 years.

Those provisions very closely parallel though they do not go as far as what would be done by those of the Nixon bill. The Nixon bill makes no attempt to fit itself into existing legislation or to meet the needs of the Department of Justice as described by the Attorney General or the Director of the FBI. The Director of the FBI has repeatedly said that any legislation that would drive the Communist Party underground would make their problem more difficult.

I do not say we necessarily endorse all legislation on the books; that we endorse the Smith Act or any other legislation on the books. The point I make is that, with those statutes already passed, there is no need for passing additional legislation. That is the point of view the Department of Justice has repeatedly expressed.

I would like to go through the Nixon bill in some detail and point out just wherein we think it is unconstitutional or otherwise objectionable.

I think there are two basic constitutional objections to the bill. The first is based on the due-process clause, first amendment, freedom of assembly. Certainly the bill restricts freedom of speech, restricts freedom of political activity, and restricts freedom of thought. Restriction of those actiivties is permissible, under decisions of the Supreme Court, only if there is a clear and present danger that needs to be met by the legislation in question. We do not think there is any such clear and present danger, so we think this legislation would be unconstitutional under the first and fifth amendments.

A second major objection to the bill is that it operates as a legislative determination of guilt. Under our constitutional system, whether the Communist movement or Communist Party or any organization is guilty is a question that must be left for the courts to determine. It is not a question for the legislature to determine. For the legislature to pass a bill determining guilt violates the due-process clause and is a bill of attainder. This bill does do exactly that. It states the guilt of the world-wide Communist movement. It does not set up a procedure for accusing the Communist Party of advocating the overthrow of the Government by force and violence. It finds what it is doing is a crime, and does not leave it to the court to make that finding.

Under this bill, the only question remaining for the Subversive Activities Control Board to decide in the case of organizations accused

of being Communist political organizations or Communist-front organizations is to identify the organizations as falling within the criteria specified in the bill. Once that identification is made, their guilt is established by Congress.

That, quite clearly, under the decisions of the Supreme Court, cannot be done. In that respect, this bill differs from the Smith Act or the Alien Registration Act. The Smith Act prohibits advocacy of overthrow of the Government and leaves it to the court to decide if the organization or individual has pursued that conduct. While the finding of clear and present danger justifies restrictions on freedom of speech and other rights protected by the due-process clause, I don't think it would justify the passage of a bill of attainder.

I would like to turn for a moment to section 4 of the bill. This section makes it unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship. It then defines totalitarian dictatorship.

In the first place, this provision as written would prohibit peaceful advocacy. It would prohibit a person from proceeding by absolutely constitutional means to change the form of Government of the United States.

If some Congressman or Senator wants to introduce a constitutional amendment to abolish the American form of government and to institute the Soviet form of government, he has an absolute right under the American Constitution to do it. He has a constitutional right to advocate any change, advocate the establishment of any form of government, so long as it is by legal and constitutional means. However, that would be prohibited by section 4 (a).

There is no requirement in section 4 (a) that the act which contributes to the establishment of a totalitarian dictatorship must be unlawful, that it must be through the use of force, that it must be through the use of illegal means. Even abstract advocacy of a constitutional amendment would be prohibited by that section. Therefore, it is clearly unconstitutional.

In the second place, the section does not require intent. It provides that the act which would substantially contribute to the establishment of a totalitarian dictatorship be done "knowingly." "Knowingly" in criminal statutes has sometimes been interpreted as requiring only a conscious act, and under the strictest construction means only that you foresee or should have foreseen the probable consequences of your act. That language is far too broad.

This point has been made by many other witnesses, I am sure. It could be met by amending the provision to read any act intentionally contributing to the establishment, and so on. Why that amendment has not been made, I don't know.

Mr. KEARNEY. Mr. Chairman, may I interrupt? The reason why, I presume, is we are just hearing the witnesses now, and when we go into executive session we will take up the bill paragraph by paragraph.

Mr. HARRIS. This point was made in the Senate committee, and certain changes were made in the Senate committee of that character, but this one was not.

Mr. HARRISON. You mean the patron of the bill did not make the change? This bill has not been considered in whole or in part by the committee.

Mr. McSweeney. Would you rather have the amendments put on the Smith Act, or have a new act?

(Representative Moulder enters hearing room.)

Mr. Harris. If we are really concerned with buttoning up holes in existing legislation, I should think the proper method would be a conference with Justice Department officials in which they could express their opinions as to what holes there were and what was necessary to button up those holes. That was done, I believe, in regard to the recent statute on espionage which passed the House the other day, H. R. 4703. That bill was drawn up to amend the existing espionage statutes. It was drawn up in collaboration with the Department of Justice to meet a need they found to exist.

Mr. Velde. What is the attitude of the Department of Justice with regard to this bill, the Nixon bill?

Mr. Harrison. They submitted a statement.

Mr. Velde. What was the purport of their statement?

Mr. Harrison. Opposition to the bill.

Mr. Velde. Opposition to H. R. 7595?

Mr. Harrison. That is my understanding. They submitted a statement.

Mr. Velde. My understanding is that the Department of Justice, with some exceptions, approves the Nixon bill.

Mr. Harris. They submitted a letter dated March 21, addressed to Mr. Wood, chairman of this committee, from Peyton Ford, the Assistant to the Attorney General. They devote most of their time to H. R. 3903, that is the Wood bill, and they state they oppose the Nixon bill for the reasons they stated in the Senate and stated last year on the Mundt-Nixon bill.

Mr. Harrison. They filed a copy of the letter they had written the Senate committee.

Mr. Harris. They point out that Mr. Hoover has always said it would make his problem more difficult to drive the Communists underground, and if they are upheld on the Smith Act prosecution they think they have all the legislation they need, and if they are not upheld, additional legislation could be drafted in the light of the court opinion.

Mr. Velde. As I recall, the Department of Justice did not question the constitutionality, with a few exceptions, of H. R. 7595.

Mr. McSweeney. I was interested in your statement that the internal security of this country was never stronger than today. I was in Europe last year. You mentioned the votes polled by Communists in elections. Do you think that is good evidence of their strength, or do you think they are proceeding in other methods that would not show up in elections?

Mr. Harris. The vote rolled up by the Communist Party in France and Italy has been falling off. I think the problem of the Communist Party will be a continuing one in those nations, particularly as long as the Russian armies are as close to the borders as they are.

Mr. Velde. I wonder if the same is true of China?

Mr. Harris. In China the Communists came in power as a result of a long and successful military campaign, and as a result of the virtual collapse of the Nationalist Army.

Mr. Velde. You think no underground network had penetrated China?

Mr. HARRIS. I don't think so. I think the very fact front organizations are used is a confession of weakness. Front organizations are used to suck in people who would not support the movements if they knew they were Communist dominated. I think the description in the findings of front organizations' secretive activities is a pretty fair description of the way Communists have worked in this country, but I don't think they have gotten very far, and I don't think they will overthrow the Government by working that way.

Mr. VELDE. Do you realize that the actual Communist Party members in Russia totaled a little over 100,000? I don't know if that is exact, but in comparison to 80,000 which Mr. Hoover said are in the United States, that is a fair comparison.

Mr. HARRIS. You mean the Communists in Russia totaled 100,000 in 1917 when they took power?

Mr. VELDE. It hasn't been that long ago.

Mr. HARRIS. They list their membership occasionally. I think it runs 2 or 3 million. But the size of the Communist Party in Russia now simply depends on how many people the government lets into the party. They are an elite governing class. When the Communists took power in Russia in 1917 they were no doubt small in numbers, but the Russian electorate was small. We are not dealing with a country where a democracy had ever existed. The number of people who voted was trivial. The Kerensky regime first went in, but with the chaotic conditions then existing they were unable to retain power. But I don't think any of them had mass control.

Mr. VELDE. Isn't it true that in all countries where the Communists have taken over, the number of Communists was relatively small?

Mr. HARRIS. Yes; but the Communists didn't take over; the Soviet armies took over. I did not say that under certain circumstances the Communist army might not constitute a clear and present danger. What I say is that the Communist movement is not an internal threat. Our country is internally secure.

Mr. VELDE. Do you thing the American Army could handle this problem within the confines of the United States?

Mr. HARRIS. I think the Department of Justice can handle it in the United States under existing legislation. I don't think you need the Army for that. I think the problem is being handled, and I think the Communist movement is growing progressively weaker.

If I may turn back to the detailed provisions of the bill, I have a couple more comments of a somewhat different character. From the standpoint of the committee, it seems to me it is perhaps too loosely drafted to serve the purpose you want. A person who does something that contributes to the establishment of a totalitarian dictatorship is punishable only if it is a totalitarian dictatorship of the type described here. Suppose a person engages in sabotage. To prove that is one thing. To prove he intends thereby to facilitate the establishment in this country of a totalitarian dictatorship under foreign domination is something else.

Another peculiarity of your definition of totalitarian dictatorship, it overlooks the old-fashioned dictatorship. It requires—

the existence of a single political party, with such identity between such party and its policies and the government and governmental policies of the country in which it exists as to render such party and the government itself indistinguishable for all practical purposes.

It apparently would be all right to establish a government of the Franco type, or a dictatorship with no party at all. You are concerning yourself with future intention—with thoughts. It is simpler to make criminal an overt act to overthrow the Government. That is criminal now. If it is an act to overthrow the Government what difference does it make what type of totalitarian dictatorship he has in mind when he does it?

Section 5 prohibits the employment by the Federal Government of members of Communist political organizations. That, again, is quite plainly a bill of attainder. It determines that members of those organizations are guilty and it penalizes them by depriving them of Government employment. Bills comparable to this were held unconstitutional after the Civil War in *Cummings* v. *Missouri* and I believe in *Ex parte Garland*. Congress passed a law that no lawyer could practice before the United States Supreme Court unless he took an oath, in effect, that he had not aided the Confederacy. That was held unconstitutional. An act of a similar nature affecting the teaching profession was held unconstitutional. Recently an act of Congress prohibiting the employment of Lovett et al. was held unconstitutional. I think section 5 falls squarely within the dictum of those cases.

Section 7 requires Communist political organizations and Communist-front organizations which have been found by the Board to be such to register as Communist political organizations or as Communist-front organizations. Elsewhere in the bill, Communist political organizations and Communist-front organizations are required to label all mail intended for more than one person as: "Disseminated by———, a Communist organization." It is also required that their radio programs carry the announcement: "The following program is sponsored by———, a Communist organization."

I don't believe under the Constitution any person can be compelled to admit his guilt. Even if he were found guilty by the courts and lost every appeal, he cannot be compelled to say that he did the prohibited act.

Some years ago the National Labor Relations Board sought to follow a practice of compelling employers to post a notice that they would cease and desist from doing whatever the Board had found they had done. Finally an employer raised the point he could not be forced to post a notice that he would cease and desist, because that would constitute an admission he had done it, and Judge Learned Hand held he could not be compelled to admit his guilt. Now the practice has been changed so that the notice says they will not do such and such, without containing any admission that they have done it.

I think those requirements of admission of guilt may well violate the constitutional provisions against self-incrimination, also.

The heart of the bill is probably in the sections which provide how the Board shall determine what is a Communist political organization. That is section 14 (e). There, again, the factors which are used to identify Communist political organizations are not themselves anything illegal or prohibited by law. They are such factors as the extent to which its views and policies do not deviate from those of such foreign government or foreign organization. None of the criteria used for identification are of themselves criminal conduct or illegal.

All that remains for the Board to do is identify the organization as falling within the described category, which violates the bill-of-attainder provision.

One of the criteria listed for identifying a Communist political organization is the extent to which it fails to disclose its membership. This provision is particularly objectionable to labor organizations, which have learned through long experience that, if the employer gets the membership list, he may use all sorts of means to dissuade membership in the union. The Labor Board, recognizing that, has repeatedly held that employer surveillance of union meetings or employer attempts to get membership lists violate the act. Yet under this bill the practice of labor organizations to conceal membership lists might identify them as Communist political organizations.

That is only one of several criteria, but the Board is told to take all of these criteria into consideration, and is not told what weight it shall give to any particular one, or even that one cannot be used as the basis for such finding.

One of the criteria for determining whether an organization is a Communist-front organization is the extent to which the positions taken by it from time to time on matters of policy do not deviate from those of any Communist political organization That provision is highly objectionable. It could be used to label many labor organization as Communist-front organizations. It will certainly be recalled that during the entire period after the attack of Germany on Russia and up until the end of the Japanese war, the policies of the Communist Party did not deviate from those of the national administration in this country.

When we come to the judicial-review provision, I take it that it is meant to give the Government an appeal, although that is not entirely clear. Section 15 (a) says that the party aggrieved by any order entered by the Board under subsection (g), (h), (i), or (j) of section 14 may obtain a review of such order, and those subsections include orders acquitting the organization. It is rather unusual to give the Government an appeal in what is essentially a criminal proceeding.

I think that completes my detailed comments on the Nixon bill.

Mr. KEARNEY. Mr. Chairman, before the witness gets to the Wood bill, I would like to ask him a question. You mentioned in your testimony something about the Treason Act that was placed on the statute books in seventeen hundred and something.

Mr. HARRIS. Seventeen hundred and ninety.

Mr. KEARNEY. Do you agree with me that that particular statute should be changed to include acts of treason in times of peace as well is in times of war?

Mr. HARRIS. The Constitution defines treason, and the act passed in 1790 is in almost the precise language of the Constitution. I think the Constitution defines treason something like this, that treason against the United States shall consist only of adhering to its enemies and giving them aid and comfort in time of war. I doubt that could be changed.

Mr. KEARNEY. Unless there was a constitutional amendment?

Mr. HARRIS. Yes. However, I think the problem can be taken care of and is taken care of by the bills on espionage such as the one recently passed by the House, H. R. 4703. I don't see that it matters whether

you call it treason or not. The kind of conduct you have in mind is covered by H. R. 4703.

Mr. KEARNEY. That is what I had in mind, any conduct that would give aid and comfort to our enemies, whether in time of war or in time of peace.

Mr. HARRIS. The very narrow definition of treason was written into the Constitution by men who knew of the oppressive use which had been made of the treason laws by the British Crown. I think it is true that wars are no longer as clear cut as they were then. They don't start with a formal declaration of war. So I think measures like the one recently passed by the House are necessary now.

Mr. VELDE. In that connection, I wonder if you have knowledge of the espionage ring operating in this country under Soviet control during the war, of American Communists and members of the Russian diplomatic service? Do you have any knowledge of that?

Mr. HARRIS. None at all. I read the newspapers.

Mr. VELDE. If there was such an espionage ring operating here during the war, do you think members of that ring could have been prosecuted under the treason statute?

Mr. HARRIS. I don't think they could under the treason statute, but I think there are statutes they could have been prosecuted under. You see, Russia and this country were allies during the war, and sending information to Russia would hardly be giving aid and comfort to our enemy.

Mr. VELDE. I understand that, but do you think they could have been prosecuted under the wartime espionage act?

Mr. HARRIS. Yes, sir.

(Representative Kearney leaves hearing room.)

Mr. VELDE. Under the peacetime espionage statute, the statute of limitations runs after 3 years. I think that was increased to 10 years.

Mr. HARRIS. I believe it was in H. R. 4703.

Mr. VELDE. Yes; it was increased to 10 years as far as the House is concerned. I take it your position is that the other statutes in effect on this subject, chiefly the espionage statutes now on the books, are sufficient if they are properly enforced?

Mr. HARRIS. As amended by H. R. 4703, assuming that goes through the Senate. If the Department of Justice says they are not sufficient, I think their recommendation should be given careful consideration.

Mr. VELDE. I think we all realize we can pass laws and more laws, and the important thing is that the laws are enforced. I don't think it would do any good to pass this law unless it is enforced. Maybe our problem lies in that direction.

Mr. MCSWEENEY. I am especially interested in your testimony because your organization has made an effort to purge itself of Communist trends; yet, you are very careful to guard the rights of the individuals. I think that is a very salutary attitude to have. But I again want to press the question: Do you think we ought to have some other legislation so that we can reach peacetime difficulties, or do you think we have enough on the statute books now to take care of it?

Mr. HARRIS. Apparently the Department of Justice feels that it needs the additional protection afforded by H. R. 4703.

Mr. MCSWEENEY. That would be enough?

Mr. HARRIS. I think that would be enough. I take the Department's word for it that that is enough.

Mr. McSweeney. Don't you think labor unions have done a splendid job of purging their groups, but we must watch groups probably more susceptible to being infiltrated?

Mr. Harris. I think people in this country are now pretty well aware of the practice of Communists in infiltrating innocent organizations, and I think most people probably are on the watch these days.

Mr. McSweeney. And you don't think we are in much danger from within?

Mr. Harris. I don't think we are in any danger from the Communist movement from within.

Mr. McSweeney. That is very encouraging.

Mr. Velde. Do you have an executive council in the CIO that makes decisions as to legislation, or how is that done?

(Representative McSweeney leaves hearing room.)

Mr. Harris. The top governing body of the CIO is the annual convention. Between conventions the executive board is the top governing body, and between meetings of the executive board the president makes decisions. On such matters as the Mundt-Nixon bill, the CIO executive board and conventions have been passing resolutions for years against such bills.

Mr. Velde. Was that done in this particular case?

Mr. Harris. Of course, it wasn't done on this particular bill, which was not pending at that particular time. I don't believe the last convention passed on it because it wasn't a critical issue at the time. I think that either the 1947 or 1948 convention adopted a resolution against the Mundt-Nixon bill.

Mr. Velde. But, as far as this bill is concerned, you have not had an opportunity to determine if the membership is opposed; have you?

Mr. Harris. No.

Mr. Velde. Would you mind telling the committee by whom your statement on this legislation was approved?

Mr. Harris. I talked to Mr. Murray about it generally and he directed me to testify against the bill. The details of the testimony are my own.

Mr. Velde. I think you did a wonderful job, and I appreciate your being with us.

Mr. Harrison. Did you want to discuss the Wood bill?

Mr. Harris. Just for a moment.

The Wood bill would prohibit a member of the Communist Party or of any organization listed as subversive by the Attorney General from being a Federal employee or from being employed in connection with the performance of any national-defense contract.

For the reasons I have already stated, I think that is unconstitutional as a bill of attainder; that is, as a legislative determination of guilt, a legislative determination delegated in part to the Attorney General.

The Department of Justice has filed its letter on this bill, and points out that it is going very far indeed to make it a crime to be a member of any organization which the Attorney General lists as subversive. Under the loyalty program, membership in such an organization is one piece of evidence which may be taken as raising a question of an employee's loyalty, but he is entitled to rebut that by showing he joined the organization innocently and that he is a loyal citizen.

It seems to me it would be inadvisable to give the Attorney General the right to destroy organizations by fiat. I think the practice the De-

partment of Justice follows at the present time of listing organizations as subversive without a hearing or any opportunity to the organizations to disprove the charge, and without judicial review, is objectionable. We hope the Supreme Court will supply this deficiency by holding that an organization listed as subversive is entitled to judicial review.

The Wood bill, however, would be far worse than that, as it would make it a crime for any Federal employee, or any individual in private industry employed in connection with the performance of any national-defense contract, to be a member of or to support any organization designated as subversive by the Attorney General.

Mr. HARRISON. What is the punishment provided for membership in such an organization?

Mr. HARRIS. $3,000; 3 years' imprisonment.

Mr. HARRISON. To be a member of a Communist-front organization?

Mr. HARRIS. To be a member of an organization designated as subversive by the Attorney General.

Mr. VELDE. That applies to persons employed by the Federal Government?

Mr. HARRIS. Or to persons employed on any national-defense contract. Say the United States Steel Co. makes plates for battleships and has 20 or 30 thousand employees working in that particular plant. I suppose the steel plant would have to come to a complete stop until all those persons belonging to any organization the Attorney General has listed would be investigated.

It seems to me the bill is foolish; it is unconstitutional, and, you might say, there is no earthly excuse for it.

I have nothing else, sir.

Mr. HARRISON. Mr. Moulder?

Mr. MOULDER. No questions.

Mr. HARRISON. Is the Smith Act founded on a finding of clear and present danger?

Mr. HARRISON. No; it does not contain that finding. I was a little puzzled by the Government's statement in the letter to Mr. Wood that the Wood bill was of doubtful constitutionality, for one reason, because it didn't contain a finding of clear and present danger. The Smith Act does not contain any such finding. The sedition acts, like the Smith Act, traditionally have not had such a finding. They merely make it a crime to advocate the overthrow of the Government by force and violence. When a particular conviction under a bill like the Smith Act comes before the Court on appeal, it can be upheld constitutionally only if the Court finds there was a clear and present danger that the speech of the individual convicted would lead to illegal conduct.

In the trial of the 11 Communists in New York, Judge Medina said whether there was a clear and present danger was a question for the judge; that it was up to him to decide whether the testimony showed there was a clear and present danger that the advocacy of the overthrow of the Government might lead to overthrow. In other words, Medina's determination that there was a clear and present danger must be upheld on appeal. That determination of constitutionality applies as to that case, but in the next case that test would have to be met.

Mr. HARRISON. Then, if you are right that there is no clear and present danger, the courts will invalidate the conviction of the 11 Communists?

Mr. HARRISON. What would be a clear and present danger which would justify one kind of statute might not justify another. For example, it is much easier to prove clear and present danger from advocating the overthrow of the Government than it is from setting up front organizations. The two don'ts stand on exactly the same footing.

Mr. HARRISON. I understood you to say there is no danger internally from Communists today.

Mr. HARRIS. I was not too impressed by the evidence the Government produced in New York. I don't think it showed they had achieved much or had any real power to carry out their objectives.

Mr. HARRISON. If the courts agree with you, they will invalidate that conviction; won't they?

Mr. HARRIS. The Department of Justice, in its letters to the Senate Judiciary Committee and to this committee, seemed to suggest that if that conviction was invalidated this bill would fall. The objection to this bill on the bill-of-attainder point would still exist, however, even if the Smith Act conviction were upheld.

Mr. HARRISON. As I said, if the courts agree with your position as to clear and present danger, the conviction in New York will have to be reversed?

Mr. HARRIS. I expect that they might say there is a clear and present danger which justifies prohibiting the overthrow of the Government by force and violence, but not such a clear and present danger as justifies penalizing Communist-front organizations.

Mr. HARRISON. Do you think there is any clear and present danger from the Communists convicted in New York?

Mr. HARRIS. The trial went on for several months, and I only read sporadic reports. Judge Medina had to listen to it all, and he is a man for whose judgment I have considerable respect, but I was not too impressed with the showing the Government made of clear and present danger.

Mr. HARRISON. But, if Judge Medina's ruling is correct, then there is a clear and present danger if he is affirmed?

Mr. HARRIS. If he is affirmed, there is a clear and present danger of having leaders of the Communist Party advocate overthrow of Government by force and violence. There is no requirement that anybody do anything illegal in this bill. It is just a finding.

Mr. HARRISON. I would like to ask you a question along one other line. You don't mean to advocate here that the Government has got to find somebody guilty of a crime in order to deny him employment by the Government of the United States; do you?

Mr. HARRIS. No; I don't think that at all.

Mr. HARRISON. In other words, the holding of a Government position is not a right but a privilege; isn't it?

Mr. HARRIS. We get into two different points here. One is the constitutional point, and the other is the abstract point of what one thinks the Government should do. On the constitutional point, the decisions are, I think, not yet in final shape. I don't think the courts have said the last word. The Supreme Court has taken a case of an organiza-

tion listed by the Attorney General as subversive. It will be asked to review an individual loyalty case in the Bailey case. In *United Public Workers* v. *Mitchell* about 5 years ago, in upholding the Hatch Act, the Supreme Court said of course a law would be unconstitutional which said no Republican or Negro or Jew could serve as an employee. That seems to say that there are constitutional limits on how far Congress can go in setting up qualifications for Government employees.

Mr. HARRISON. There was a day when employment would be denied to Republicans and Negroes, but to the victor belongs the spoils.

Mr. HARRIS. The spoils system certainly holds in America. Whether that means there is no constitutional problem in discharging Government employees, or whether the courts will say Government employees do have certain constitutional rights, we don't know the answer. I think they should have rights, myself.

Mr. HARRISON. Possibly we put too much stress on loyalty rather than on security. A man might be loyal and at the same time an unwise selection for a responsible Government position solely from the standpoint of his views.

Mr. HARRIS. I think that is true, and I am also afraid that the loyalty procedures and widespread publicity given to charges against the loyalty of Government employees will make it more and more difficult for the Government to get the right kind of employees.

Mr. HARRISON. You wouldn't advocate the appointment of a Secretary of State who believed in the forceful overthrow of the Government of the United States, or who believed in communism; or you wouldn't advocate the appointment of a Secretary of State who was opposed to the Marshall plan; would you?

Mr. HARRIS. No. I think members of the Communist Party should be barred from all sensitive jobs. Whether they should be barred from jobs that do not involve security, I don't know.

Mr. HARRISON. Suppose he was completely loyal but his temperament was such he had to tell everything he knew. The Government should not be in a position where it could not discharge him without judicial review such as you advocate?

Mr. HARRIS. At the present time, Government procedure has fallen short of even judicial review. In a Loyalty Board hearing the employee does not see the FBI file; he isn't told who the witnesses against him were; he isn't told what is in the FBI file. The Board which decides the case does not even know the identity of the informants named in the FBI file. You could give an employee a much fairer hearing than that and still stop short of a full-fledged trial or judicial review.

Mr. HARRISON. I am not talking about his loyalty. Suppose he is a man who can't keep a secret. A lot of people are that way. Don't you think the Government should be able to get rid of employees who divulge its secrets, no matter how innocently?

Mr. HARRIS. Certainly.

Mr. HARRISON. Any further questions?

Mr. TAVENNER. Mr. Harris, there is one question I did not ask you when you were sworn in which it is the practice of this committee and other committees of the House and Senate to ask all witnesses testifying on subversive matters. The question is, Are you now or have you ever been a member of the Communist Party?

Mr. HARRIS. I am not a member and have never been.

Mr. TAVENNER. That is all.

Mr. HARRISON. Thank you, Mr. Harris. That was very informative testimony.

Mr. TAVENNER. Mr. Thomas I. Emerson.

Mr. HARRISON. Mr. Emerson, do you solemnly swear that in the testimony you are about to give this committee you will speak the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EMERSON. I do.

(Representative Velde leaves hearing room.)

TESTIMONY OF THOMAS I. EMERSON

Mr. TAVENNER. You are Mr. Thomas I. Emerson?

Mr. EMERSON. Yes.

Mr. TAVENNER. I think you are appearing as a representative of the Progressive Party?

Mr. EMERSON. Yes.

Mr. TAVENNER. I will ask you the same question you just heard me ask the gentleman who left the witness stand. Are you now or have you ever been a member of the Communist Party?

Mr. EMERSON. No.

Mr. TAVENNER. Do you have a prepared statement that you desire to either file or read to the committee?

Mr. EMERSON. I have a prepared statement which I would like to read, at least parts of it.

Mr. HARRISON. Would it be agreeable to you to have the entire statement filed as a part of your testimony, and then to refer to such parts of it as you desire?

Mr. EMERSON. Yes.

Mr. HARRISON. It is so ordered.

(The statement of the witness above referred to is as follows:)

TESTIMONY OF THOMAS I. EMERSON, REPRESENTING THE PROGRESSIVE PARTY, BEFORE THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, ON H. R. 7595 AND H. R. 3903, BILLS TO CONTROL SUBVERSIVE ACTIVITIES

My name is Thomas I. Emerson. I am an attorney and for 13 years served in various legal capacities in the Federal Government. My last position with the Government was general counsel of the Office of War Mobilization and Reconversion. Since 1946 I have been professor of law at Yale Law School. I do not speak in any way, however, for Yale Law School or Yale University.

I am here today as representative of the Progressive Party. The Progressive Party takes a special interest in the pending legislation because it has vigorously fought for economic and social reform in the United States and has at the same time—with equal vigor—insisted upon the maintenance and advancement of basic democratic freedoms in America. At its most recent convention, held in Chicago 6 weeks ago, the Progressive Party reiterated its position on these fundamental issues in the following words:

"We again proclaim that the Progressive Party is an independent indigenous American party dedicated to the revitalizing of democracy through the four freedoms and the attainment of world peace through the process of collective bargaining around the council tables of the United Nations.

"In reaffirming our faith in the American form of government, we declare our opposition to the use of violence in this country as a means of social, economic, or political change, or to the imposition of dictatorship in any form upon the American people."

and again:

"We believe that the American Constitution with its Bill of Rights provides the basic machinery for peaceful and democratic social, economic, and political change in the United States.

"* * * We declare that the protection of the rights of Communists and all other minority groups, no matter what their economic, religious, or political viewpoints, to express and advocate their views is the first line in the defense of the liberties of a democratic people."

It is in accordance with these principles that the Progressive Party wishes to express its sincere conviction that the legislation now pending before your committee will not solve any real problem but will irreparably damage the democratic process in America and in the world.

THE BACKGROUND

In weighing the wisdom of the pending legislation it is important, I think, to bear in mind two basic considerations.

The first is that the proposed bills mark a sharp break with the tradition of freedom of political expression as it has hitherto existed in the United States. That tradition is characterized by full freedom to advocate views, no matter how unorthodox, and full confidence that the democratic system is sufficiently vigorous and intelligent to consider all such views and to reach the right solution. Nowhere have these concepts been better expressed than by Thomas Jefferson in his first inaugural address:

"If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know, indeed, that some honest men fear that a republican government cannot be strong; that this Government is not strong enough. But would the honest patriot, in the full tide of a successful experiment, abandon a government which has so far kept us free and firm, on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth."

My own State of Connecticut, in its constitution, adopted a century and a half ago, made the same declaration of a democratic faith:

"That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that they have at all times an undeniable and indefeasible right to alter their form of government in such manner as they may think expedient."

Throughout history our wisest and greatest statesmen and judges—Lincoln, Holmes, Brandeis, Hughes, Franklin Roosevelt, and many others—have repeatedly reaffirmed these basic principles. We should therefore ponder long and carefully before we repudiate this tradition by legislation which evinces such small faith in democratic institutions that it must forbid certain views to be circulated in the market place of ideas.

In the second place we must consider the proposed legislation against the background of existing law. We are not today faced with a situation where the Nation is helpless to protect itself against activities that violate the customary cannons of the democratic process. On the contrary, statutes now on the books prohibit treason, sabotage, espionage, improper intercourse with foreign governments, insurrection, force or violence, and conspiracies to commit any such acts. Federal law and the law of many States even make it a crime to advocate overthrow of the Government by force or violence—legislation with which I personally disagree but which is not the issue of the discussion here. And the McCormack and Voorhis Acts require registration of foreign agents. Possibly some of this legislation contains minor loopholes—a question which also I do not discuss here—but in the main it seems to me entirely adequate to protect us against violent and undemocratic methods.

The point is that the Nixon bill goes far beyond normal protective legislation and carries us into the area of prohibiting even peaceful methods of economic and social change. We must weigh carefully the grave consequences of such a step and consider thoroughly the dangers of thereby destroying the whole structure of democratic government.

In the light of these two basic considerations permit me now to call attention of the committee in somewhat more detail to the actual consequence of the proposed legislation. I shall confine my discussions primarily to H. R. 7595 (the

Nixon bill) although H. R. 3903 (the Wood bill) seems to me open to similar objections.

OUTLAWING THE COMMUNIST PARTY

Section 4 (a) of the Nixon bill makes it a criminal offense, subject to imprisonment up to 10 years, for any person "knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual." Sections 7 and 8 require any Communist political organization, as defined in the bill, to register with the Attorney General and submit the names and addresses of all officers and members; and an accounting of all receipts and expenditures; to file annual reports containing similar information; and to keep records of members and of other persons who "actively participate in the activities of such organization." Under other sections, members of a Communist political organization may not seek or accept employment with the Government; apply for or use passports; and are subject to criminal prosecution if their organization has failed to register or if they have not been registered as members by the organization. Communist political organizations may use the mail to distribute information only if the envelopes proclaim on the outside that the material originates from a Communist organization.

I take it there is all but unanimous agreement that it would be unwise to outlaw the Communist Party and drive it underground. In its report on similar legislation in 1948 this committee rejected "the outlawing approach" and gave as its reasons:

"1. Illegalization of the party might drive the Communist movement further underground, whereas exposure of its activities is the primary need.

"2. Illegalization has not proved effective in Canada and other countries which have tried it.

"3. We cannot consistently criticize the Communist governments of Europe for suppressing opposition political parties if we resort to the same totalitarian methods here." The committee's arguments are persuasive ones, and I understand the Department of Justice adheres to this view. I myself subscribe to it, for the reasons given and for additional ones.

Yet I find it impossible to believe that the Nixon bill will not do exactly what the committee and the Department of Justice say they are anxious to avoid. The findings of fact in section 2 declare in so many words that Communist political organizations in various countries (presumably including the United States) "endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship" (presumably that of the Soviet Union). Thus it seems to be the plain intention of the bill that members of the Communist Party are guilty of the offense specified in section 4 and subject to imprisonment for 10 years. If the bill does not mean this I am at a total loss as to what it does mean, or why section 4 is included.

Furthermore, I assume it is beyond dispute that the bill is intended to compel the Communist Party to register under section 7 and be subject to the other restrictions on Communist political organizations. Yet it is fanciful to believe that the Communist Party could exist under such conditions. The present hostile attitude of the country—particularly as it is reflected in the refusal to employ Communists in Government or private industry—would inevitably deprive the party of membership and dry up its funds. I am sure that most students of the present political scene would agree that the only possible alternative for the Communist Party would be to go completely underground.

I need not elaborate upon the unhealthy and dangerous consequences of such a development. As the committee has itself realized, such an outcome would solve nothing. It would mark the abandonment of democratic methods for making our common decisions and the acceptance of totalitarianism itself.

IMPACT OF THE BILL UPON NONCOMMUNISTS GROUPS—AS REVEALED UPON THE FACE OF THE BILL

But the bill would go far beyond outlawing the Communist Party itself. This is evident from the fact that section 4 is directed against all persons, not merely members of the Communist Party, and that most of the other restrictions

are imposed not only upon Communist political organizations but also upon "Communist-front organizations."

Section 4, as I have said, makes it unlawful for any person to agree "to perform any act" which would "substantially contribute" to the establishment of a totalitarian dictatorship under foreign control. The prohibition is not confined to acts of force or violence, or acts which are otherwise illegal. It embraces all acts, of whatever nature, and thus includes all common and hitherto lawful conduct such as making a speech, writing a pamphlet, organizing a committee, writing a letter to a Congressman, and any other method of communicating ideas or influencing action. Nor is there any requirement that these acts be done willfully or with the intent of injuring the United States. It is a crime if the person involved did them knowing what their effect would be. This is probably the most sweeping restriction on political action ever to come before the Congress.

Just what acts would "substantially contribute" to the establishment of a dictatorship is, of course, highly uncertain. Such total vagueness is, in itself, one of the chief vices of the bill. But certain definite possibilities, which reveal the all-embracing character of the prohibition, may be noted. Thus any action which can be construed to assist the Soviet Union or Communist China, or which injures any foe of a Communist country, or which even criticizes the anti-Communist policy of the United States, might be prohibited. Furthermore, section 2 recites the conclusion of the draftsmen that both the Communist Party and Communist-front organizations are working exclusively to establish a totalitarian dictatorship in the United States under foreign control. Hence it appears to be the intention of the bill to make criminal any act, whether done in association with such organizations or not, which "substantially" aids their objectives however innocent they may appear to be.

All this opens a limitless area to Federal prosecution. Opposition to the Marshall plan, to the North Atlantic Pact, to the United States proposals for control of atomic bombs, to Franco Spain—to almost any phase of official foreign policy or official military policy—could be included. So could activity in support of nationalization of the coal industry, health insurance, even the Brannon plan—all of which have been sincerely described as communistic. Joint action with any "Communist-front organization," such as a jointly sponsored meeting, would appear to be proscribed. Action which was taken independently but happened to coincide with the policy or program of the Communist Party or a Communist-front organization would seem to fall within the ban. Presumably even action to defend the civil liberties of a Communist group, or to ask for repeal of the Smith Act or the Nixon bill itself, would likewise be outlawed. It seems unnecessary to elaborate further.

In the same manner the registration requirement and the other restrictions on "Communist-front organizations" would drastically curtail freedom of political expression by non-Communists. Certainly no person who had any regard for his own welfare, or that of his family, could afford to become an officer or to contribute to any organization found to be a Communist-front or, equally important, any organization which might be so found. Apart from the likelihood of prosecution under section 4, such a person would be publicly branded as a traitor, ostracized by the community, and in all probability denied the chance to earn a living. Mounting unemployment would make his position still more precarious.

For the same reasons no organization found to be a Communist front could hope to survive.

These restrictions go far beyond the prohibition of organizations actually dominated and controlled by the Communist Party. They strike at all associations which do not confine their activities to the conventional and orthodox. This is apparent from the definition of "Communist-front organization."

Section 3 defines a Communist-front organization as one under the control of a Communist political organization or primarily operated for the purpose of aiding and supporting a Communist political organization or the world Communist movement. Factors to be considered in making this determination are the participation of Communists in the organization, activity which promotes the objectives of the Communist movement, and the extent to which the positions taken by the organization coincide with those taken by Communist organizations.

Here, too, the standards are excessively vague. But clearly any organization with a few Communist members, even though unknown to the other members, could be found a Communist front. Yet most individuals are in no position

to ascertain the possible affiliation of other members. Likewise an organization supporting positions which were also supported by the Communist Party or other organizations found to be Communist fronts would be in grave jeopardy of being labeled a Communist front organization itself. Under these conditions few would dare to join organizations and few organizations would dare to oppose any controversial government policy. As a matter of fact the Communist Party would be in a position to destroy any organization it wished by simply infiltrating some of its members into that organization.

These hazards would apply not only to organizations founded to promote political causes; they would throttle also labor unions, scientific associations, nationality and religious groups, and even cultural organizations. They would not only drastically curtail freedom of expression and freedom of association in the United States; they would completely shut off communication between America and that large part of the world which is now Communist.

Thus the bill, on its face, would both seriously undermine essential democratic institutions in our own country and gravely impair prospects of world understanding and world peace.

THE BILL IN ACTUAL OPERATION

The dangers I have so far pointed out are those which appear on the face of the bill. It is equally important, however, to visualize the bill in actual operation. Law on the books does not tell the whole story. It is law in action that really counts.

It has been argued that the worst fears of those who oppose the legislation will not be realized—that the bill if passed would be administered with restraint and moderation.

Unfortunately the lessons of history teach us otherwise. There seem to be powerful forces at work which inevitably push the administration of such legislation to extremes—extremes which in later times we have invariably regretted.

The Sedition Act of 1798 furnishes an illustration of this inevitable tendency. That legislation—comparable in many ways with the present bill—prohibited the publication of any "false, scandalous, and malicious writing" against the Government, if published with intent to defame or excite hatred or stir up sedition. The first conviction under this act was a Republican Congressman running for reelection. Matthew Lyon, Congressman from Vermont, was sent to jail for making a speech in which he charged President Adams with "unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." Many other prosecutions under the Sedition Act threw into jail men who were guilty of no greater offense.

Our next experience with legislation comparable to the present bill came with the Espionage Act in the First World War. Under the 1918 amendments, known as the Sedition Act of 1918, severe restrictions were imposed upon expressions of opinion affecting the conduct of the war. Some 1,956 prosecutions were brought under the Espionage Act and 877 convictions obtained. Many States carried on similar campaigns under State legislation. Professor Chafee has summarized the temper of these prosecutions:

"It became criminal to advocate heavier taxation instead of bond issues, to state that conscription was unconstitutional though the Supreme Court had not yet held it valid, to say that the sinking of merchant vessels was legal, to urge that a referendum should have preceded our declaration of war, to say that war was contrary to the teachings of Christ. Men have been punished for criticizing the Red Cross and the Y. M. C. A., while under the Minnesota Espionage Act it has been held a crime to discourage women from knitting by the remark, 'No soldier ever sees these socks.' "

The reasons for this kind of a response to sedition legislation can perhaps be surmised. Passage of the legislation is in itself an official signal that a dangerous threat exists to our security. Such a signal arouses fear. Fear breeds passion, prejudice, and irrational excesses. The whole process may be accentuated by those who deliberately incite further fear and prejudice for their own purposes. The result is that once the country embarks upon such a course reason seldom provides a stopping place.

There are many signs today that we are approaching the same state of hysteria which made possible the Roman holiday under the Sedition Act and the Espionage Act. In recent testimony before the Senate Appropriations Committee it appeared that the Department of Justice is contemplating prosecution of more than 12,000 cases under the Smith Act, in the event that legislation is declared

constitutional by the Supreme Court. The current charges of disloyalty in the State Department are a clear indication of the atmosphere in which we live today. In view of these facts, I think the only safe assumption to make is that the Nixon bill, if passed, would be enforced to the hilt, very likely as ruthlessly as the Sedition Act and the Espionage Act.

At any rate that would be the risk. And to the individuals and associations subject to such a risk only the exceptionally courageous or foolhardy would not prefer to remain silent and inactive.

Certain other aspects of the administration of sedition legislation are equally significant. Enforcement would require a large staff of FBI agents. They would be empowered to probe into the affairs of every individual and every organization in the country. They would maintain millions of dossiers on individuals and organizations. Presumably they would follow their usual practices—the use of secret informers working within suspected organizations, wire tapping, searches and seizures, shadowing, the mail cover, the trash cover, and other similar devices. Thus the bill would bring to full fruition what already represents one of the most dangerous developments since the war—the creation of an omnipresent political police. Nothing could be more obnoxious to free citizens nor more destructive of free institutions.

I do not have the time to discuss other serious problems of administration—such as the opportunity for harassment of individuals and organizations, the lack of jury trial on crucial issues, the encouragement to the States to enact similar legislation. I hope I have said enough, however, to give some indication of the atmosphere which would undoubtedly prevail upon passage of this legislation.

THE CONSTITUTIONAL ISSUES

In the interests of time I must deal with the constitutional issues somewhat summarily. I would not want the inference drawn from this, however, that the constitutional issues are of secondary importance. On the contrary, in my judgment the proposed legislation directly violates a number of basic constitutional guaranties upon which the entire structure of democracy rests.

In considering legislation of this sort the Supreme Court has taken the position that the usual presumption in favor of the validity of legislative acts is not applicable. The court has repeatedly pointed out that restrictions upon the essential operation of the democratic process itself—restrictions which block the normal functioning of that process—will be subjected to "more searching judicial inquiry." Hence the proposed legislation must carry the heavy burden of demonstrating its constitutional justification.

The major constitutional issue arises under the guaranty of freedom of speech, press, and assembly embodied in the first amendment. The spirit in which the Supreme Court has interpreted these guaranties is clear from the language of Chief Justice Hughes in the *DeJonge* case:

"The greater the importance of safeguarding the country from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that Government may be responsible to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." (*DeJonge* v. *Oregon*, 299 U. S. 353, 365.)

For the reasons already stated, there can be no doubt that the proposed legislation imposes the most far-reaching and burdensome limitations upon freedom of political expression. Such restrictions are obviously prohibited unless they can be brought within some qualification to the inclusive language of the first amendment. The Supreme Court has recognized that, at least in certain types of cases, freedom of political expression may be curtailed to some extent where necessary to prevent a clear and present danger of a significant evil. And section 2 of the act makes a legislative finding that the "world Communist movement" presents "a clear and present danger to the security of the United States and to the existence of free American institutions."

Despite this effort to bring the bill within the clear and present danger doctrine, the restrictions of the bill are in my judgment definitely in conflict with the first amendment. I base this statement upon two principal grounds.

In the first place I do not believe the evidence justifies the conclusion that the world Communist movement presents the kind of threat to the United States that is contemplated by the clear and present danger doctrine. The avowed

purpose of the bill is to prevent the establishment of totalitarian dictatorship controlled from abroad. Yet the possibility that at any time in the foreseeable future the Communist Party could overthrow the United States Government by force and establish a dictatorship here seems to me utterly remote and even fantastic. President Truman and many others have repeatedly scouted such an idea. Nor does there now appear to be any serious threat of the use of lesser forms of violence to settle our political arguments. And the possibility that various groups in the United States may change our political or economic institutions by peaceful democratic means is clearly not a "danger" within the meaning of the "clear and present danger" rule.

The danger presented by the posibility of foreign conquest, or the imposition of a foreign dictatorship as a result of war, raises a different type of issue. Personally I firmly believe that the United States and the Soviet Union will be able to live together in the same world in peace. However that may be, preparation for such a war cannot justify the destruction of democratic institutions in America.

This leads me to the second point. Even if it be assumed that the factual basis exists for finding a clear and present danger, that finding does not thereby justify all limitations upon political expression which the legislature may see fit to impose. On the contrary, the Supreme Court has consistently held that the prohibitions must be narrowly drawn to meet the specific danger and may not include in sweeping language prohibitions only remotely related to the danger.

It seems to me clear that the Nixon bill violates this principle. It imposes a complete prohibition upon conduct directed at certain political objectives, regardless of the fact that the conduct is entirely peaceful and regardless of its relation to the military or the active conduct of war. In doing so the bill undertakes to forbid conduct squarely within the area which the Court has held immune from control. Thus in the DeJonge case the Court declared invalid a State law which penalized the holding of a peaceful meeting even though the meeting was sponsored by the Communist Party, which the Court, for the purposes of that case, assumed to be an illegal organization. The same general position was taken in the case of *Herndon* v. *Lowry* (301 U. S. 242). It is to be noted that under these circumstances the Court did not even consider the applicability of the clear and present danger test.

This, in brief, is my principal reason for believing the bill invalid under the first amendment. I believe also that it violates other recognized constitutional requirements:

1. The language of the bill, at the key points, is so vague and indefinite that one can only guess at its meaning. I have already pointed this out in connection with the language of section 4 prohibiting acts which "substantially contribute" to the establishment of a totalitarian dictatorship. The same vice runs throughout the bill, particularly in the definitions of "Communist political organization" and "Communist-front organization." Especially in the area of political expression it is vital that one know what the precise prohibitions are. Otherwise one can avoid risk of overwhelming penalties only by acquiescence and inaction.

2. The bill embodies the principle of guilt by association. It penalizes mere membership in organizations regardless of motives or actions of the individual. This is directly in conflict with the holdings of the Supreme Court in the DeJonge and Herndon cases, as well as the *Schneiderman* and *Bridges cases* (320 U. S. 118 and 326 U. S. 135).

3. The bill violates the constitutional provision against bills of attainder. In the light of the findings in section 2 the bill constitutes a legislative declaration that the Communist Party and Communist-front organizations are guilty of criminal acts.

Quite apart from policy considerations, therefore, the bill should be rejected as contrary to both the letter and the spirit of the Constitution.

What is the real problem and how can it be solved?—In conclusion let me try to reframe the problem before the committee, attempting to place it in broader context. Why is it that we feel it necessary to forbid by legislative fiat certain kinds of nonviolent political action? Why is it that the idea of loyalty looms so large in our minds these days, and that we appear to be uncertain of the loyalty of so many of our citizens, including those in high places?

The answer is, of course, that we are living in a period of far-reaching change. As a result of scientific and industrial developments over the past decades we are faced with new kinds of problems—problems we have not been called upon to solve before. This is particularly true in many foreign countries, but it is also true of the United States. Thus the crucial question, like it or not, is

whether we can adapt our institutions, our ideas and our way of life to the demands of the modern world.

The issue is made more difficult for us—and an answer is being forced from us at a quicker pace—by the fact that the Communist countries of the world have reached what they consider the proper solution. The Communist answer is not one that we in the United States will accept. But the very existence of the Communist idea, and the fact that powerful nations proclaim it so passionately, obviously affects us profoundly.

Our first recation under these circumstances is likely to be defensive. And since it is more often than not tinged with fear, it is likely to be irrational. We refuse to recognize the need for progressive modification of some of our economic and social practices. We attempt to stamp out by sheer force not only those who propose the Communist answer but those who propose any answer. With all due respect, I suggest that this is the approach taken by this committee in the Nixon bill.

The approach is irrational because it does not meet the real issue and because it cannot succeed. In the first place it overestimates the danger, both from within and from without. The Communist solution has gained no serious foothold among the people of the United States. And I refuse to believe that communism would ever come to this country as a result of foreign persuasion alone. Much more important, the defensive response is a purely negative-holding operation, whereas the real problem can only be met by an affirmative program of positive action.

Hence the Nixon bill cannot ultimately succeed in giving us an answer to the troubles and difficulties that prompted the legislation. On the other hand, it does infinite damage, for it actually blocks the path to a solution through the time-honored processes of democracy.

Many years ago John Stuart Mill remarked:

"A state which dwarfs its men in order that they be more docile instruments in its hands, even for beneficial purposes, will find that with small men no great thing can really be accomplished."

This is a lesson that in these times, and particularly in this city of Washington, we might well take to heart.

Mr. EMERSON. May I ask what the time limit is?

Mr. HARRISON. Of course, if the bell rings, we have to adjourn. Otherwise, we are very anxious to get all the information we can get, but time is a very pressing problem to us at all times. So, we ask you to present it to us with as much dispatch as possible.

Mr. EMERSON. I am here as a representative of the Progressive Party. The Progressive Party takes a special interest in the pending legislation because it has vigorously fought for economic and social reform in the United States and has at the same time, with equal vigor, insisted upon the maintenance and advancement of basic democratic freedoms in America.

It is in accordance with these principles that the Progressive Party wishes to express its sincere conviction that the legislation now pending before your committee will not solve any real problem but will irreparably damage the democratic process in America and in the world.

At the outset, I want to call the committee's attention to two basic points by way of background.

First, I want to stress that the proposed bills mark a sharp break with the tradition of freedom of political expression as it has hitherto existed in the United States. That tradition is characterized by full freedom to advocate views, no matter how unorthodox, and full confidence that the democratic system is sufficiently vigorous and intelligent to consider all such views and to reach the right answer. It seems to me this proposed legislation blocks free expression and is based on lack of faith in the democratic system to follow traditional principles.

Secondly, I want to point out what Mr. Harris has already covered pretty thoroughly, and that is the background of existing law. We already have, in my opinion, adequate legislation to cover the problems of treason, sabotage, espionage, improper intercourse with foreign governments, insurrection, force or violence, and so forth, and I feel that this legislation, which goes beyond that area, is quite unnecessary.

Let me make two or three points about the actual consequences of the proposed legislation.

In the first place, with respect to the outlawing of the Communist Party, I take it on that I am in agreement with this committee that it would be unwise to outlaw the Communist Party and drive it underground, unless the committee has changed its views since 1948, because at the time the earlier bill was reported in 1948 the committee rejected the proposition that we should outlaw the Communist Party, on three grounds: First, that it would drive the Communist movement further underground; second, that illegalization has not proved effective in Canada and other countries which have tried it; and, third, quoting from the committee report:

> We cannot consistently criticize the Communist governments of Europe for suppressing opposition political parties if we resort to the same totalitarian methods here.

I am in agreement with those reasons of the committee, and I would offer additional reasons if I had time. I take it on this proposition there is no dispute.

It is impossible for me to believe the Nixon bill does not outlaw the Communist Party. The findings of fact in section 2 declare in so many words that Communist political organizations in various countries—and that certainly includes the Communist Party of the United States—

> endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship (unnamed, but obviously that of the Soviet Union).

So, it seems to be the plain intention of the bill that members of the Communist Party are guilty of the offense specified in section 4 and subject to imprisonment for 10 years. If section 4 does not mean that, I do not know what it does mean.

It seems to me clear that the bill is intended to compel the Communist Party to register under section 7 and be subject to the other restrictions on Communist political organizations. We think section 7, imposing severe restrictions on the Communist Party, accomplishes the same result even if section 4 were omitted from the bill, because one cannot believe that the Communist Party could exist and maintain its membership and maintain funds if it were required to register and follow the other restrictions imposed upon it by section 7 and later sections.

I need not elaborate upon the unhealthy and dangerous consequences of outlawing the Communist Party in this country. I think any student of the present political scene would agree with me that the bill does what the committee says should not be done.

I want to consider next the impact of the bill upon non-Communist groups.

Mr. Mr. Harris pointed out, section 4 makes it unlawful for any person to agree to perform any act which would substantially contribute to the establishment of a totalitarian dictatorship under foreign control. The prohibition is not confined to acts of force or violence, or acts which are otherwise illegal. It embraces all acts, of whatever nature, and thus includes all common and hitherto lawful conduct such as making a speech, writing a pamphlet, organizing a committee, writing a letter to a Congressman, and any other method of communicating ideas or influencing action. Nor is there any requirement that these acts be done willfully or with the intent of injuring the United States.

Just what acts would "substantially contribute" to the establishment of a dictatorship is, of course, very uncertain, and that is a serious vice of the bill. But there are certain possibilities which, it seems to me, would be definite possibilities if the statute would be interpreted to cover them.

It seems to me it could be construed to mean that any act which assisted the Soviet Union or which was construed to assist Communist China, or which injured any enemy of a Communist country such as Franco Spain, or any act which even criticized the anti-Communist policy of the United States, might be prohibited.

Furthermore, section 2 recites the conclusion of the draftsmen that both the Communist Party and Communist-front organizations are working exclusively to establish a totalitarian dictatorship in the United States under foreign control. Hence, any aid or assistance or cooperation with Communist Party members or members of Communist-front organizations would seem to fall under section. 4.

I am sure other witnesses have testified to some of the possibilities of what might be prosecuted, but I think it is important to realize that opposition to the Marshall plan would technically fall within the prohibition of section 4, because it could be held to substantially contribute to the establishment of a totalitarian dictatorship. So could activity in support of nationalization of the coal industry, health insurance, even the Brannan plan, all of which have been described as communistic.

Any joint action with a Communist-front organization, even though one might not be aware that it was a Communist-front organization, would appear to be proscribed. Action which was taken independently but happened to coincide with the policy or program of the Communist Party or a Communist-front organization would seem to fall within the ban. Presumably even action to defend the civil liberties of a Communist group or of an individual alleged to be a member of the Communist Party or a member of a Communist-front organization, or to advocate the repeal of the Smith Act or of this bill if passed, or to advocate a constitutional amendment to change the form of government to a dictatorship, would be prohibited. The section is so far reaching that it could be used to outlaw freedom of political expression throughout the country.

The same criticism applies to the provisions with respect to registration, particularly of Communist-front organizations. Obviously, no person who had any regard for his own welfare or for the welfare of his family could afford to become an officer of or to contribute to a Communist-front organization or to an organization that was likely to be found to be a Communist-front organization. Such a person

could not live in many communities at the present time, and his opportunities for employment would be negligible, and in many communities it would be impossible.

The definition as to what is a Communist-front organization is an extremely vague one, but, nevertheless, the bill would seem to mean that any organization that had some Communist members, even though they were not known to the other members, could be found to be a Communist front. Individuals who are considering joining an organization cannot make an investigation to find out whether other members belong to the Communist Party; therefore, the only alternative is to refrain from joining.

As a matter of fact, the Communist Party would be in a position to destroy any organization it wished by simply infiltrating some of its members into that organization and turning it into a Communist-front organization within the statute.

These hazards would apply not only to organizations founded to promote political causes; they would throttle also labor unions, scientific associations, nationality and religious groups, and even cultural organizations. They would not only drastically curtail freedom of expression and freedom of association in the United States; they would completely shut off communication between America and that large part of the world which is now Communist.

Thus the bill, on its face, would both seriously undermine essential democratic institutions in our own country and gravely impair prospects of world understanding and world peace.

I want to proceed to the next point, and that is the bill in actual operation. So far, I have examined the bill with respect to the impact of the bill upon non-Communist groups, as revealed upon the face of the bill. But, as Congressman Velde pointed out, it is equally important how the bill is enforced. Law on the books does not tell the whole story. It is law in action that really counts.

It has been argued that the worst fears of those who oppose the legislation will not be realized; that the bill, if passed, would be administered with restraint and moderation.

What I want to stress to the committee is that, unfortunately, the lessons of history teach us otherwise. There seem to be powerful forces at work which inevitably push the administration of such legislation to extremes, extremes which in later times we have invariably regretted.

You have heard a good deal about the Sedition Act of 1798, which, I am sure witnesses have pointed out, furnishes an illustration of this inevitable tendency. That legislation, comparable in many ways to the present bill, prohibited the publication of any "false, scandalous, and malicious writing" against the Government if published with intent to defame or excite hatred or stir up sedition.

The first conviction under this act was a Republican Congressman running for reelection. Matthew Lyon, Congressman from Vermont, was sent to jail for making a speech in which he charged President Adams with "unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." Many more prosecutions under the Sedition Act threw into jail men who were guilty of no greater offense.

Our next experience with legislation comparable to the present bill came with the Espionage Act in the First World War. Under the 1918 amendments, known as the Sedition Act of 1918, severe restric-

tions were imposed upon expressions of opinion affecting the conduct of the war. Some 1,956 prosecutions were brought under the Espionage Act, and 877 convictions obtained under the Federal Act. In addition to this, there were many State prosecutions under State laws.

Some of the prosecutions, and some of the crimes for which men and women were put in jail, were these:

> It became criminal to advocate heavier taxation instead of bond issues; to state that conscription was unconstitutional, though the Supreme Court had not yet held it valid; to say that the sinking of merchant vessels was legal; to urge that a referendum should have preceded our declaration of war; to say that war was contrary to the teachings of Christ. Men were punished for criticizing the Red Cross and the Y. M. C. A., while under the Minnesota Espionage Act it was held a crime to discourage women from knitting by the remark "No soldier ever sees these socks."

It sounds absurd to us now, Mr. Chairman, but the fact is that legislation of this sort, which attempts to restrict freedom of political expression, seems to be carried to that kind of extreme. The reasons for this are not perhaps clear, but I think I can suggest them.

Passage of the legislation is in itself an official signal that a dangerous threat exists to our security. Such a signal arouses fear. Fear breeds passion, prejudice, and irrational excesses. The whole process may be accentuated by those who deliberately incite further fear and prejudice for their own purposes.

The result is that once the country embarks upon such a course reason seldom provides a stopping place. There are many signs that we are in a similar period of hysteria today, a period comparable to the Roman holiday under the Sedition Acts and the Espionage Acts. Therefore, I think the only safe assumption to make is that the Nixon bill, if passed, would be enforced to the hilt, very likely as ruthlessly as the Sedition and Espionage Acts.

At any rate, that would be the risk that people would run who were thinking of taking political action or any kind of action which affected political affairs. And to the individuals and associations subject to such a risk, only the exceptionally courageous or foolhardy would not prefer to remain silent and inactive.

Let me also mention certain other aspects of the administrative features of the bill now before your committee.

Mr. MOULDER. Mr. Chairman, I have appointments in my office that require me to absent myself. I am sorry.

(Representative Moulder leaves hearing room.)

Mr. HARRISON. You may proceed.

Mr. EMERSON. Enforcement would require a large staff of FBI agents. They would be empowered to probe into the affairs of every individual and every organization in the country. They would maintain millions of dossiers on individuals and organizations. Presumably they would follow their usual practices—the use of secret informers working within suspected organizations, wiretapping, searches and seizures, shadowing, the mail cover, the trash cover, and other similar devices. Thus the bill would bring to full fruition what already represents one of the most dangerous developments since the war, the creation of an omnipresent political police. Nothing could be more obnoxious to free citizens nor more destructive of free institutions.

On the constitutional issues I will submit my brief with only one further remark. I agree with Mr. Harris that there is no showing of clear and present danger which would constitutionally justify this bill. I want to point out further that even if it were to be assumed that there were a clear and present danger, such a finding would not justify all the limitations upon political expression which the legislature may see fit to impose. On the contrary, the Supreme Court has consistently held that the prohibitions must be narrowly drawn to meet the specific danger and may not include in sweeping language prohibitions only remotely related to the danger.

It seems to me clear that the Nixon bill violates this principle. It imposes a complete prohibition upon conduct directed at certain political objectives, regardless of the fact that the conduct is entirely peaceful, and regardless of its relation to the military or the active conduct of war. In doing so the bill undertakes to forbid conduct squarely within the area which the Court has held immune from control. Thus in the DeJonge case the Court declared invalid a State law which penalized the holding of a peaceful meeting even though the meeting was sponsored by the Communist Party, which the Court, for the purposes of that case, assumed to be an illegal operation. In that case the Court did not even consider the applicability of the clear and present danger test.

Therefore I say on this ground, in addition to those already stated to you, the bill would be unconstitutional.

In conclusion let me try to reframe the problem before the committee, attempting to place it in broader context. Why do you feel it necessary to forbid by legislative fiat certain kinds of nonviolent political action? Why is it that the idea of loyalty looms so large in our minds these days, and that we appear to be uncertain of the loyalty of so many of our citizens, including those in high places?

The answer is, of course, that we are living in a period of far-reaching change. As a result of scientific and industrial developments over the past decades we are faced with new kinds of problems—problems we have not been called upon to solve before. This is particularly true in many foreign countries, but it is also true of the United States. Thus the crucial question, like it or not, is whether we can adapt our institutions, our ideas, and our way of life to the demands of the modern world.

The issue is made more difficult for us, and an answer is being forced from us at a quicker pace, by the fact that the Communist countries of the world have reached what they consider the proper solution. The Communist answer is not one that we in the United States will accept. But the very existence of the Communist idea, and the fact that powerful nations proclaim it so passionately, obviously affects us profoundly.

Our first reaction under these circumstances is likely to be defensive. And since it is more often than not tinged with fear, it is likely to be irrational. We refuse to recognize the need for progressive modification of some of our economic and social practices. We attempt to stamp out by sheer force not only those who propose the Communist answer, but those who propose any answer. With all due respect, I suggest that this is the approach taken by this committee in the Nixon bill.

The approach is irrational because it does not meet the real issue, and because it cannot succeed. In the first place, it overestimates the danger, both from within and from without. The Communist solution has gained no serious foothold among the people of the United States. And I refuse to believe that communism would ever come to this country as a result of foreign persuasion alone. Much more important, the defensive response is a purely negative holding operation, whereas the real problem can only be met by an affirmative program of positive action.

Hence the Nixon bill cannot ultimately succeed in giving us an answer to the troubles and difficulties that prompted the legislation. On the other hand, it does infinite damage, for it actually blocks the path to a solution through the time-honored processes of democracy.

Many years ago John Stuart Mill remarked:

> A State which dwarfs its men, in order that they be more docile instruments in its hands, even for beneficial purposes, will find that with small men no great thing can really be accomplished.

This is a lesson that in these times, and particularly in this city of Washington, we might well take to heart.

Mr. HARRISON. That completes your statement?

Mr. EMERSON. Yes.

Mr. HARRISON. Thank you very much.

Anything further?

Mr. TAVENNER. That is all.

Mr. HARRISON. The committee will stand adjourned, subject to the call of the Chair.

(Thereupon, the hearing was adjourned.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

TUESDAY, MAY 2, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC SESSION

The subcommittee met, pursuant to call, at 10:45 a. m. in room 226, Old House Office Building, Washington, D. C., Hon. Burr P. Harrison presiding until arrival of Hon. John S. Wood (chairman).

Committee members present: Representatives John S. Wood (chairman, arriving as indicated), Burr P. Harrison, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; Louis J. Russell, senior investigator; Donald T. Appell, William A. Wheeler, and William Jackson Jones, investigators; and A. S. Poore, editor.

Mr. HARRISON. The committee will come to order.

Mr. Tavenner, call your first witness.

Mr. TAVENNER. Mr. Gerson. You will be sworn, please.

Mr. HARRISON. You solemnly swear that the evidence you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GERSON. I do.

TESTIMONY OF SIMON W. GERSON

Mr. TAVENNER. Will you state your full name and your address, please?

Mr. GERSON. Simon W. Gerson, 8860 Eighteenth Avenue, Brooklyn, N. Y.

Mr. TAVENNER. You appear here this morning as a representative of the Communist Party of the United States in connection with the legislative hearings?

Mr. GERSON. I do.

Mr. TAVENNER. Mr. Gerson, it has been the policy throughout this and other similar hearings to ask each witness who appears in a matter of this kind the question of whether or not he is a member of the Communist Party, so I would like to ask you the same question.

Mr. GERSON. Apart from the patent absurdity of the question, the answer to which is self-evident at this point, sir, I wish to state for the record that I am a member of the Communist Party, that I have been for sometime, and that I intend to be one.

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Mr. KEARNEY. Let me say right there, Mr. Witness, that your answer is more honest and to the point than that of many witnesses who appear here.

Mr. GERSON. I do not want to reflect on any previous witness, Mr. Kearney, not having heard their testimony, but it is completely understandable, in a period when there is so much smearing and character assassination, that people don't care to discuss their political affiliations. It so happens that I care to discuss mine at this particular point.

Mr. TAVENNER. Do you have a prepared statement?

Mr. GERSON. I do, and I have afforded the committee members a copy of that statement.

Mr. TAVENNER. We would like you to file it for the record, and if you desire, you may read it.

Mr. GERSON. I do, and I should like to interpolate, but by and large I shall follow the text of the prepared statement.

My name is Simon W. Gerson. I represent the Communist Party in opposition to the Nixon bill, H. R. 7595, the companion measure to the Mundt-Ferguson-Johnston bill in the Senate, S. 2311.

The Communist Party wishes to associate itself in general with the Nation-wide opposition already registered against the bill—that of the whole labor movement, AFL, CIO, Railway Brotherhoods and independent unions; the National Association for the Advancement of Colored Peoples, the American Jewish Congress, the American Civil Liberties Union, Americans for Democratic Action, the American Veterans Committee, the National Farmers Union, the Women's International League for Peace and Freedom, the Association of the Bar of the City of New York, the National Lawyers Guild, Governor Bonner of Montana, Governor Johnson of Colorado, the noted constitutional authorities, Prof. Zecheriah Chafee of Harvard Law School, Prof. Fowler Harper of Yale Law School, and Prof. William Gorham Rice of Wisconsin; such distinguished citizens as President Robert Hutchins of the University of Chicago and Councilman Stanley M. Isaacs, Republican minority leader of the New York City Council; religious groups like the Episcopal League for Social Action and the Friends (Quakers) Committee on National Legislation; Bishop Francis Haas, of Grand Rapids, Mich.; the more than 20 major newspapers which have editorially opposed this bill; and the thousands of local groups which have condemned the measure.

Probably no single measure before the Eighty-first Congress has evoked such a flood of opposition, cutting across all partisan, regional, and denominational lines, as has the Mundt-Nixon bill. Parenthetically, we would like to observe that even on the basis of sheer figures, any representative body would do well to reject out of hand a measure so clearly opposed by the majority of the country.

This Nation-wide, nonpartisan opposition is not accidental. It is reflective of the fact that millions of Americans and labor in the first instance regard this bill correctly not as a threat to the Communists alone but to the ancient liberties of all Americans. It reflects the fact that despite the cold war hysteria and the McCarthyian miasma over Washington, the lessons of fascism in Italy and Germany are not lost upon millions of Americans.

In those nations the destruction of all democratic rights began with the attach "only" upon Communists. But with remorseless logic the

attack soon enveloped and destroyed all who stood in any way for peace and democratic rights—the trade unions, the Socialists, the Jews, the Catholics, and the liberals of all faiths.

History now recognizes that the destruction of civil rights at home was only the domestic phase of fascism's program of aggressive war abroad. Without silencing every voice for peace and democracy, it would have been impossible for Hitler and Mussolini to wage war upon their neighbors. To wage aggressive war one must substitute guns for butter; one must destroy free trade unions and those who fight for peace; this is an iron law of history which millions of Americans voicing opposition to the Mundt bill are beginning to realize.

Despite all legalistic tinkering, the Mundt-Nixon bill suffers about every major constitutional infirmity in the calendar. It is vague, indefinite, destructive of due process, a bill of attainder and an outright violation of constitutional guaranties of free speech, free thought, and free association. It flagrantly substitutes guilt by association for the historic American doctrine of personal guilt. Above all, it seeks to deprive the sovereign people of their rights of free political choice and, therefore, negates the very basic concept upon which American representative democracy was founded. If enacted into law, it would effectively close the legal avenues of expression by which the American people under the Constitution effect social and political change. It would, in our opinion, even make impossible the type of change in national political direction voted by the people in 1932 by effectively blocking the possibility for the legal existence of a national movement like the New Deal.

Gentlemen, today I don't want to discuss the legal and constitutional questions in detail. I prefer to deal with the broad question of public policy.

The constitutional infirmities to which we refer are inherent in the purposes of the bill and no amount of redrafting can eliminate them. Any bill which seeks such objectives will necessarily do force and violence to the American constitution and the Bill of Rights. Let us, therefore, understand the issue clearly: the United States can have the Constitution or it can have the Mundt-Nixon bill. It can't have both. For the Mundt bill is the very opposite of traditional American democratic rights. It marks the boundary line from which we as a nation slip over from capitalist democracy to a fascist dictatorship. And this dictatorship is made no sweeter by reason of the fact that it is introduced in legislative form rather than by a black-shirted mob or a man on horseback. The history of every country where fascism was introduced—Italy, Germany, Spain—shows the same startling parallel. Fascism always "began" with the destruction of the rights of the Communist Party. It always preceded its destruction of all popular rights with the smokescreen of the "right against communism." Contrarywise, those nations in which capitalist democracy, however limited, still exists and fascism has not come to power, there the Communist Parties continue to exist as legal entities. Those countries include England, France, Italy, Belgium, Holland, Finland, the Scandinavian countries, and even Japan.

Ironically enough, Mr. Chairman, Japan, home of the original "thought control" police, still formally accepts the underlying premises of our Bill of Rights, while some members of our Congress are prepared to destroy them. A Tokyo dispatch in the New York Times

of February 14, 1950, quotes Japanese Attorney General Shunkichi Ueda as insisting that prosecutions against radicals can be undertaken only against overt acts, and not against ideas. "The law can be invoked only if ideas are translated into action," Mr. Ueda is quoted as saying.

Now, no such inhibition is present in the Mundt-Nixon bill. Men and women can be jailed simply for belonging to certain organizations. And who is to decide what organizations and what actions of an organization "substantially contribute to the creation within the United States of a totalitarian dictatorship"? A politically appointed Subversive Activities Control Board is to decide that question.

This Board could easily decide, for example, that the miners' union was "substantially contributing" to the creation of a totalitarian dictatorship by a strike. Senator Kilgore correctly made that point in a statement of March 6 last that the Mundt bill, which is in effect a sedition law, could be used against organized labor. And what organization fighting for peace, civil liberties, Negro rights, the needs of labor, for public housing, or against discrimination, could not at some time or other be penalized by such a board? It is a matter of record, for example, that there are even real-estate representatives who charge that supporters of public housing are "substantially contributing" to socialism in our country.

Only last Wednesday, April 26, Edwin S. Friendly, president of the American Newspaper Publishers Association, attacked the so-called welfare state and communism disguised as democratic socialism. What chance would any organization advocating progressive, New Deal, or even Fair Deal measures have before a board of which Mr. Friendly or one of his stripe was a member?

This bill cannot be separated from the bipartisan cold-war atmosphere in which it arises. This bill is simply the domestic expression of the bipartisan war drive of the administration and its Republican allies. It is, in short, a cold-war measure. As Senator McCarthy and his followers would speed the timetable of the aggressive war drive of Wall Street and the big brass, so would this bill speed the timetable of destruction of civil liberties at home. The bill might well be described as Senator McCarthy's ravings in legislative form. If this bill becomes law, guilt by association and hanging by hearsay will become commonplace features of American life.

If this bill were enacted into law, we would have what Congressman Edward Livingstone so prophetically warned us against in his historic speech against the alien and sedition laws in the congressional debates at the close of the eighteenth century. I think it is appropriate, gentlemen, to repeat Congressman Livingstone's warning at this time:

The country will swarm with informers, spies, delators, and all the odious reptile tribe * * * the hours of the most unsuspected confidence, the intimacies of friendship, or the recesses of domestic retirement, afford no security. The companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber, are all tempted to betray your imprudent or unguarded follies; to misrepresent your words; to convey them, distorted by calumny, to the secret tribunal where jealousy presides—where fear officiates as accuser, and suspicion is the only evidence that is heard. * * * Do not let us be told that we are to excite a fervor against a foreign aggression to establish a tyranny at home. * * *

While the Mundt-Nixon bill is opposed by millions of Americans, the overwhelming majority of whom are non-Communists who understand that their democratic rights are in jeopardy, it is also increasingly recognized that this bill seeks to outlaw the Communist Party. Let there be no mistake about this. No one is fooled by the shabbily transparent legal gimmick in the bill, in which the Communist Party is referred to as a "Communist political organization." There is only one Communist political organization in the United States and that is the Communist Party. It should be clear, therefore, to the entire country that the measure is in fact an unconstitutional bill of attainder, aimed, among other objectives, at outlawing the Communist Party.

On its part the Communist Party declares the characterization of the Communist political organization (read "Communist Party") in section 2 of the bill to be a series of gross political falsehoods akin to the Hitler big lie under which the Nazis plunged Germany into fascism and the world into war. It is fantastically untrue that the Communist Party is a conspiracy. It is an American political party whose roots go back to the Civil War when American Communists served loyally as leaders and rank-and-filers in the Union armies to suppress the slave owners' rebellion against the Union. The Communist Party was born out of the great movements for socialism, for trade unionism, and for the liberation of the Negro people in our country. It is a legitimate current in American working-class life and will continue to be so long as the struggle against capitalism exists. It will continue to fight for its legality under any and all circumstances.

The allegation that the Communist political organization (again, read: "Communist Party") is a foreign agency is equally fantastic and is belied by the very record of the Government. For years there have been on the statute books laws directed against illegal foreign agents. The fact that in the 30 years' history of the Communist Party there has not been a single prosecution brought against it for violating these laws belies this slanderous charge. It was not for lack of hostility by the Department of Justice. The fact is there was not—and is not—a single shred of evidence to prove this charge of "foreign agent."

Prof. Zecheriah Chafee, in his communication on the Mundt-Nixon bill to the Senate Judiciary Committee last year, declared that he saw very little evidence to support the recital in the bill that the "Communist movement presents 'a clear and present danger * * * to the existence of free American institution.'" We go further and declare flatly that the Communist Party is neither a "clear and present danger" nor an obscure and remote danger to American democratic institutions. To the contrary, the Communist Party supports every move of the American people to maintain and extend democratic achievements, from the right to vote at the ballot box to the greatest democratic achievement possible—socialism—the common ownership and management of the means of production and distribution of our Nation.

(Representative Wood enters hearing room: Representative Harrison leaves hearing room.)

Mr. GERSON (continuing). The Communist Party is probably the most vilified and persecuted organization in America today. It is slandered in the Congress, the public press, and in virtually every

other agency of monopoly-controlled public communication. Its members are generally barred from public employment and frequently discharged from private employment when their views become known. It is a matter of common knowledge that our telephones are tapped, our mails checked, our private lives investigated and Government informers and agents provacateur sent into our organizations. (This is, of course, increasingly true for many other labor, progressive, and independent organizations.) Eleven Communist leaders have been convicted in New York not for any overt acts but for "teaching and advocating" the historic viewpoint of Marxian socialism. Communists have been penalized for publicly expressing their views and, contrariwise, handed contempt sentences for refusing to discuss their political affiliations or refusing to become parties to the creation of blacklists. Thus the constitutional guaranties of both speech and silence have been equally violated for Communists. Finally, the Communists, like the Abolitionists of last century, have at times become the victims of actual physical terror.

As a consequence of this creeping pattern of repression and slander, it has become more difficult for people to find out the true fundamental aims of the Communist Party. I therefore think it appropriate at this time to state the basic aim of the Communist Party as set forth in its Constitution, binding upon all its members:

> The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. It uncompromisingly fights against imperialism and colonial oppression, against racial, national, and religious discrimination, against Jim Crowism, anti-Semitism, and all forms of chauvinism. * * *
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> The Communist Party recognizes that the final abolition of exploitation and oppression, of economic crises and unemployment, of reaction and war, will be achieved only by the socialist reorganization of society—by the common ownership and operation of the national economy under a government of the people led by the working class.
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> The Communist Party, therefore, educates the working class, in the course of its day-to-day struggles, for its historic mission, the establishment of socialism. Socialism, the highest form of democracy, will guarantee the full realization of the right to "life, liberty, and the pursuit of happiness," and will turn the achievements of labor, science, and culture to the use and enjoyment of all men and women.

The Communist Party states flatly that it has no higher allegiance than to the people of the United States and the sovereign power that resides in the American people.

(Representative Harrison returns to hearing room.)

Mr. Gerson (continuing). Under all circumstances, we loyally defend the genuine national interests of our people. We affirm that no basic social change can come in our country except by the will of the American people. We know that socialist reorganization of society cannot be imported or exported. It cannot be imposed upon the American people by a minority group or by force and violence. Only the American people—above all, the producers, the workers and farmers of America—can make such decisions.

(Representative Harrison leaves hearing room.)

Mr. Gerson (continuing). I now want to address myself to one special feature of the bill: the registration feature. This is frequently advanced by proponents of the measure as simply a disclosure section, designed to place Communists on a par with Republicans and Democrats in respect to disclosure.

This reveals a vast ignorance of the activities of the Communist Party. As one who has been a campaign manager and a Communist candidate for public office, I can testify of my own personal knowledge that the Communist Party has complied with every law, rule, and regulation in respect to dis closure of its political activities. For example, in 1946 it ran candidates for office in my State, filed petitions of voters, financial records, and in every other way complied with the election law governing independent political organizations. This was accomplished in the face of numerous legal and extra-legal difficulties.

I might add parenthetically, gentlemen, that one of the difficulties was the actual physical violence we met in the peaceful pursuit of canvassing for signatures, and also the knowledge that the signatures would wind up in the files of this committee. It is a matter of record in your recent report that you have photostatic copies of signatories to the 1946 nominating petitions in New York State.

Up to 1936 in New York the Communist Party was officially on the ballot and took part in both primary and general elections. It was not we, but the State Legislature in New York—like legislative bodies in other States—who persistently adopted restrictive legislation narrowing further and further the political field for Communists and other political minorities.

This helps answer the question: Who is destroying political liberty in our country? It is not the Communists who pass restrictive election laws in the various States. It is not the Communists who are responsible for the antidemocratic poll tax. It is not the Communists who are responsible for the continuance of the crime of lynching. It is not the Communists who maintain the Nation's capital as a Jim Crow city in which men like Ralph Bunche and Paul Robeson cannot eat, sleep, and live like free citizens. It is not the Communists who filibuster against FEPC and a civil-rights program and prevent the democratic aspirations of the people from coming to a vote. It is not the Communists who pass antilabor Taft-Hartley laws. It is not the Communists who becloud the discussion of foreign policy with a McCarthyian madness.

Say what you will about the Communists, they didn't invent the right freely to teach and advoate one's political views. That freedom is historically embodied in the Declaration of Independence and the Bill of Rights and is an article of faith of all democratic Americans, irrespective of political outlook. It was not the Communists but the founding fathers who declared that "whenever any government becomes destructive" of certain inalienable rights, "it is the right of the people to alter it." It was not a Communist but Abraham Lincoln who said:

> This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it.

It was not a Communist leader but the venerable Justice Holmes who said (Brandeis concurring), in a memorable dissent (*Gitlow* v. *People of New York*, 268 U. S. 652):

> If, in the long run, the beliefs expressed in the proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

It is not we Communists who are responsible for the diminishing of avenues of political expression in our Nation. It is not we Communists who fear the market place of public opinion where the various programs for peace, security, and democracy can be placed before the sovereign American people. In brief, gentlemen, it is not we Communists who are turning our backs on the traditions of Holmes and Brandeis, Jefferson and Lincoln. It is the proponents of the Mundt-Nixon bill.

The Communist Party opposes the Mundt-Nixon bill in principle because we seek not the closing of the avenues of public expression but their widest and most democratic extension. We are for a free and public debate of foreign policy, of the sinister renazification of Germany, of the outlawing of the H- and A-bombs, of a top level conference with the Soviet Union looking toward a durable peace. We are for these things because we are profoundly convinced that a third world war is not inevitable and that there can be peaceful coexistence of and competition between capitalism and socialism. We are profoundly convinced that if these issues are freely and frankly discussed with the facts before them the American people will express themselves overwhelming for peace and against the present Truman-Dulles-Acheson bipartisan war policies, which differ only in tempo and degree from those of Senator McCarthy and his friends. It is precisely the chief purpose of the Mundt-Nixon bill to stifle this vast, mass expression of the American people for peace.

We wish at this time to reaffirm our oft-repeated warning: any measure aimed at destroying the rights of Communists and alleged Communists will inevitably wind up by destroying the civil rights of all. This point was well made by an eminent Catholic figure, the late Father John M. Ryan, during a period of anti-Red hysteria immediately after World War I. At that time, it may be recalled, five Socialist assemblymen were brutally expelled from the New York State Legislature on much the same charges of "conspiracy" and "foreign agent" now leveled against the Communists. In a letter to the Socialist defense in 1920, Father Ryan wrote, and I quote:

> Possibly my desire to see your personal cause triumph—meaning this cause before you—is not altogether unselfish. For I see quite clearly that if the five Socialist representatives are expelled from the New York Assembly on the ground that they belong to and avow loyalty to an organization which the autocratic majority regards as inimical to the best interests of the State, a bigoted majority in a State—say, in Georgia—may use the action as a precedent to keep out of that body regularly elected members who belong to the Catholic Church, for there have been majorities in the legislature of more than one Southern State that have looked upon the Catholic Church exactly as Speaker Sweet looks upon the Socialist Party.

The moral is valid today. Bigotry breeds bigotry. And the anti-Communist hysteria today is unleashing anti-democratic, anti-Negro, anti-Semitic and anti-Catholic forces in our Nation, even as the Hitlerian anti-communism bred the same type of forces in Germany. The defeat of the Mundt-Nixon bill will be a big blow to all these anti-democratic forces in our life.

In closing, I would like to reaffirm my party's position in the event of this bill's passage by quoting from the testimony of William Z.

Foster, national chairman of the Communist Party, before the Senate Judiciary Committee on the Mundt bill, May 28, 1948:

> If the Mundt-Nixon bill were to pass, the Communist Party would not perjure itself by admitting any resemblance to the monstrous caricature of its nature and purposes drawn in this bill. It would not dishonor the 15,000 members of our party who fought against fascism in World War II by giving de facto sanction to Hitler's big lie. That is one reason why we would refuse to register.
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> Furthermore, as a party of patriotic and loyal Americans, we could not and would not become accomplices to the murder of the Bill of Rights. That is another reason why we would not register. And finally, we would not register because we will never expose our members to persecution, ostracism, and blacklisting in employment.

But no matter what the fate of this particular piece of legislation, the Communist Party reaffirms its complete confidence in the American people, who will never submit to fascist slavery nor abandon the fight against a civilization-destroying atomic war. We are confident that the American working class, of which the Communist Party is an organic and leading part, will lead the American people to a destiny of peace, progress, security, and friendship with all nations. We are supremely confident that the dark hours will end and, in Jefferson's moving words, "we shall see the reign of the witches * * * pass over and the people recovering their true right."

Mr. WOOD. For the purpose of the record, this hearing is being conducted by a subcommittee composed of Messrs. Harrison, Kearney, and Wood.

General Kearney, have you any questions you would like to ask the witness?

Mr. KEARNEY. I would just like to ask the witness a couple of questions to clear up an apparent confusion in my own mind. First of all, I thought I was somewhat of a student of American history, and I understand from this witness' testimony that the Communist Party existed at the time of the Civil War?

Mr. GERSON. No, sir, I did not seek to convey any such impression. The fact is there were Communists in existence. There was a Communist League, I believe it was called, with various branches, and a leading Communist, Joseph Wedemeyer, was commissioned by Abraham Lincoln at the time. He was active in the Union Army in and around St. Louis. There is considerable documentation about Communists at that time. I might say, parenthetically, that some of the finest foreign correspondence in respect to the Civil War was written for Horace Greeley of the New York Tribune by Karl Marx. Abraham Lincoln acknowledged great debt to Karl Marx and the working class in a series of correspondence you will find in the archives. Communists of the United States and Communists of the world upheld the Star Spangled Banner as being the banner of freedom.

Mr. KEARNEY. What about today?

Mr. GERSON. The Communist Party today knows no allegiance higher than allegiance to American freedom.

Mr. KEARNEY. Then I wish you would clarify the testimony of Mr. William Z. Foster, wherein he states:

> Workers of this country and workers of every country have only one flag, and that is the Red flag.

Mr. GERSON. I cannot speak for Mr. Foster, but I think the record should show that at subsequent hearings Mr. Foster repudiated the

previous testimony he had given. The testimony you read is about 18 years old, if memory serves me correctly.

Mr. KEARNEY. Still it is sworn testimony of Mr. Foster. The statement was also made by Mr. William Z. Foster, head of the Communist Party in the United States:

> No Communist, no matter how many votes he should secure in a national election, could, even if he would, become President of the present Government. When a Communist heads the Government of the United States—and that day will come just as surely as the sun rises—the Government will not be a capitalist government but a Soviet government, and behind this government will stand the Red army to enforce the dictatorship of the proletariat.

Mr. GERSON. I now want to repeat for the record that Mr. Foster, in subsequent testimony, repudiated that testimony, and what I have given today is a definitive position of the Communist Party and I am sure is in consonance with Mr. Foster's thinking, although I take personal responsibility for what I have written.

Mr. KEARNEY. That is all.

Mr. WOOD. Do you have any further questions, Mr. Tavenner?

Mr. TAVENNER. No, sir.

Mr. WOOD. Thank you, Mr. Gerson, for coming here and giving us this testimony.

Do you have any further witnesses?

Mr. TAVENNER. Yes, sir. Mr. Lamberton.

Mr. WOOD. Mr. Lamberton, you solemnly swear the evidence you give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LAMBERTON. I do.

Mr. WOOD. Have a seat.

TESTIMONY OF HARRY C. LAMBERTON

Mr. TAVENNER. Will you state your full name, please?

Mr. LAMBERTON. Harry C. Lamberton.

Mr. Chairman, I would like to say that I am appearing for Mr. Durr. Mr. Durr sent his apologies. Unfortunately, he is tied up in a hearing today and is unable to appear, so he asked that I represent the National Lawyers Guild in his place.

Mr. WOOD. Do you appear here for the National Lawyers Guild?

Mr. LAMBERTON. I do.

Mr. WOOD. And this statement you are now about to make to the committee is a statement prepared at the instance of the National Lawyers Guild for presentation here?

Mr. LAMBERTON. That is correct, Mr. Wood. It is the statement that Mr. Durr was to give on behalf of the guild, so in reading it I am reading his statement.

Mr. WOOD. I just want to know who is responsible for the statement, whether you assume personal responsibility for the statement or whether it represents the views of the guild.

Mr. LAMBERTON. It represents the views of the guild, with which I am in complete accord.

Mr. TAVENNER. Are you a member of the National Lawyers Guild?

Mr. LAMBERTON. I am.

Mr. TAVENNER. Do you hold office in the guild?

Mr. LAMBERTON. I am president of the Washington branch of the National Lawyers Guild.

Mr. TAVENNER. It has been the custom of the committee, in hearings of this character, to ask each witness whether he is now or ever has been a member of the Communist Party. I would like to ask you that question.

Mr. LAMBERTON. I will answer the question, although I would like the record to show that I feel the question is an improper one, for one among several reasons that I am representing an organization, and my personal political affiliation should be of no more concern to this committee than my religious affiliation.

Answering the question, I am not a member of the Communist Party.

Mr. TAVENNER. And you have not been a member of the Communist Party?

Mr. LAMBERTON. I have not been a member of the Communist Party.

Mr. TAVENNER. Will you proceed with your statement?

Mr. LAMBERTON. I would like to read this statement and also submit it for the record.

Mr. WOOD. Very well.

Mr. LAMBERTON. The National Lawyers Guild is opposed to the passage of this bill (H. R. 7595) because it regards the bill as a dangerous and far-reaching encroachment on the fundamental liberties of the American people, including freedom of speech, press, assembly, and the guaranty against punishment without the due process of law. It believes that this bill, if enacted, will go far toward destroying the very foundations of our democratic system.

The proponents of H. R. 7595 assert that it does not infringe constitutional liberties. They make two basic representations:

First, they say that the bill does not restrict any person's right to speak or assemble; that it merely requires him to disclose his identity and to speak and assemble under his true colors. It is claimed that no organization would be outlawed.

Secondly, they say that the bill applies only to persons or groups seeking to establish in this country a "totalitarian dictatorship" controlled by a foreign government or "the international Communist movement," described in section 2 of the bill.

The provisions of the bill, however, contradict these assertions. This we shall demonstrate by examining in considerable detail the provisions of H. R. 7595.

The crime created by section 4 (a) of the bill—and I shall not read it—does not, as in the usual case of conspiracies, require an overt act, but only an agreement to perform an overt act. The punishable agreement extends not to an agreement to establish, or even to facilitate, a totalitarian dictatorship itself, but only an agreement to perform an act which substantially facilitates or aids the establishment of such a dictatorship.

In short, this subsection would punish a person for conduct which was not intentionally in aid of totalitarian dictatorship and which would not involve otherwise unlawful conduct, if only a court should find that an innocently done act in fact contributes to the establishment of the dictatorship. There is no requirement of the use or agreement to use or even of advocacy of an unlawful means to facilitate a dictatorship. All that need be shown is that two or more people

agree to do something which a court might find aids substantially in the result.

The phrase "any act which would substantially contribute" is without clear meaning. We do not believe that an average citizen could know what acts or agreements the courts might say would come within the meaning of that phrase. However, in the light of the bill's preamble and the definitions in section 3, it seems clear that one objective of this subsection is to punish cooperation or agreements to cooperate in any way with the Communist Party, or any other group which may be subject to the provisions of this bill. By the bill's definitions in sections 2 and 3, the Communist Party and the other proscribed groups seek to establish a totalitarian dictatorship in the United States or function primarily to that end. Hence any cooperation with them in furtherance of common objectives, including acts which are constitutionally protected, is readily construable as an act or agreement to commit an act which "would substantially contribute" to the establishment of a dictatorship.

The subsection, then, under its comprehensive wording and its apparent objective, would threaten criminal punishment for, say, agreements or cooperation with the proscribed groups to support common candidates for office, to join in demonstrations or picketing activities, or to support defense activities in legal cases, as, for instance, the recent trial of the Communist leaders. In addition to thus including within its scope the activities of non-Communists, it even more clearly encompasses the activities of Communists no matter how innocuous. Members of the Communist Party, by merely agreeing to pay dues, to solicit subscriptions to the Daily Worker and other Communist periodicals, to meet with each other, to hold mass meetings and the like, could by such activities subject themselves to the reach of the subsection.

Unless the first amendment of the Constitution is to be reduced to a mockery, these activities must be protected. Under the bill, however, they carry punishment up to 10 years' imprisonment and a fine up to $10,000, together with the denial under subsection (c) of the right to hold public office or any position of trust or profit created by the laws of the United States.

The present subsection is in our opinion more oppressive than the corresponding provision of last year's bill. Last year the same numbered subsection had four parts. The second standard was "to perform or attempt to perform any act with intent to facilitate or aid in bringing about the establishment in the United States of such a totalitarian dictatorship." This provision is identical with the present clause except that now H. R. 7595 requires no proof of intent. Thus greater proof was required under section 4 (a) of the former bill than under H. R. 7595.

In the light of the foregoing analysis, section 4 is, in our opinion, unconstitutional for the following reasons:

1. Under the guise of punishing attempts to establish a totalitarian dictatorship in the United States dominated from abroad, it permits the punishment of peaceful advocacy and assembly as distinguished from acts and incitements threatening the immediate destruction of our Government. Accordingly, it violates the first amendment, which denies to Congress the power to make any law abridging freedom of speech or assembly.

2. It violates the due process clause of the fifth amendment, because it defines a crime in terms so vague and indefinite that an ordinary citizen cannot know from reading it what conduct is prohibited.

Last year the Senate Judiciary Committee called upon three distinguished lawyers, recognized by the committee as experts in constitutional law, for their opinion of the constitutionality of last year's Mundt-Nixon bill. We have already shown that no material change, except for the worse, has been made in subsection 4 (a). Here is what these three experts said of that subsection of the old bill:

Charles Evans Hughes, Jr., said:

> The question of the validity of this bill turns principally on that of its compatibility with the first and fifth amendments to the Constitution.
>
> In my opinion, section 4 of the bill offends both of these principles. That section would make it a crime to attempt "in any manner to establish in the United States a totalitarian dictatorship under the control of "any" foreign organization or to perform or attempt "any act" with intent to facilitate or aid that purpose. Manifestly, this would include attempts to bring about such result by expression of opinions through speech or publication, or by participation in peaceable assemblies, designed to bring about changes in the Government through orderly processes of amendment of the Constitution. Statutes which spread as wide a net as that violate the first amendment (*Stromberg* v. *California* 283 U. S. 359 (1931); *Herndon* v. *Lowry*, 301 U. S. 242, 249–250, 255, 260–261 (1937). See *Schneiderman* v. *United States*, 320 U. S. 118, 137–138 (1943).)

Attorney General Tom C. Clark said:

> The principle that a criminal statute must be definite and certain in its meaning and application is well established; a principle which may not be satisfied by the definitions and criteria of the bill (*Connally* v. *General Construction Company*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451.)
>
> It is also doubtful whether or not this proposal will meet the requirements of due process under the fifth amendment. A statute which would define the nature and purposes of an organization or group by legislative fiat is likely to run afoul of the due process requirements. (*Manley* v. *State of Georgia*, 279 U. S. 1 (1929)) (p. 424 of hearings on H. R. 5852.)

There is also a quotation from John W. Davis along somewhat the same lines.

Seth Richardson, president of the Loyalty Review Board in the Civil Service Commission, said:

> I am inclined to the view that before section 4 of the act can be deemed a proper exercise of the power of the Congress to protect the country against threatened danger, the bill should provide that efforts to establish a totalitarian dictatorship must be accompanied by force and violence and by unconstitutional procedures (p. 444 of hearings on H. R. 5852).

The effort of the Senate Judiciary Committee majority to avoid the patent unconstitutionality of this section under the first amendment prohibiting abridgment of freedom of speech and assembly, by reliance on the "finding" in section 2 (11), shows a complete misunderstanding of the "clear and present danger" doctrine enunciated by the Supreme Court.

In the most recent cases the Court has used stronger and clearer language. In *Terminiello* v. *Chicago* (337 U. S. 1 (1949)) the Court said:

> * * * freedom of speech, though not absolute * * * is nevertheless protected against censorship or punishment, unless shown likely to produce clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. * * * There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization

of ideas either by legislatures, courts, or dominant political or community groups.

There are, then, three essential elements of the doctrine. It applies to specific utterances which involve incitements to immediate unlawful action. As the Court said in the Schneiderman case, supra (p. 157): "There is a material difference between agitation and exhortation calling for present violent action." Secondly, the words must be uttered under such circumstances that unless the state intervenes unlawful actions may result immediately (presently). Thirdly, the danger must relate to actions which the "Congress has a right to prevent."

This bill strikes at agreements to act, without any action or overt act being required to be shown. If there is an act involving speech, press, or peaceable assembly, the "act" need not be shown to have been in the nature of a direct incitement to any unlawful action. It need not be shown that words were uttered under circumstances which establish that a foreign dominated dictatorship would immediately or presently result. And the Congress has no power to prevent any effort to change our form of government by lawful means.

Section 4 (b) relates to the unauthorized communication by officers or employees of the Government of classified information. We find nothing seriously objectionable in this subsection. However, we cannot see any valid reason for including such a provision, relating to espionage, in this bill which has no connection whatever with that subject matter.

Although section 4 (a) is highly objectionable, the major vice of the bill lies in the remainder of its text, which deals with the registration of organizations and individuals, and the penalties and procedures incident thereto.

It is apparent that registration carries with it severe consequences for the organization which has registered and for its members and supporters. Some of these consequences are expressly provided for in the bill itself. Thus an organization which is required to register must, under pain of severe penalties, publicly divulge its members and financial affairs. Its literature and radio and television broadcasts must, under section 11, be invidiously labeled. The organizations are denied tax exemptions and contributions to them are not tax deductible (sec. 12). Members of organizations ordered to register as "Communist political organizations" have additional disabilities. Thus they may not hold nonelective Federal office, and cannot obtain passports (secs. 5 and 6).

But these disabilities, severe as they are, are mild compared to the unexpressed social and economic consequences which will befall the members of a registered organization. A registered organization is, under the bill's definition, conspiratorial, disloyal, and seditious. Obviously any organization which either voluntarily publicly describes itself in such terms, or is so described by governmentl (including judicial) action, is subject to intense public odium, as are those persons hardy enough to remain members thereof.

It is perfectly apparent, there, that no organization can or will voluntarily register under these provisions. Attorney General Clark pointed this out. He said: "It can be assumed that no organization

would confess guilt by registration." (cp. 424, hearings on H. R. 5852.) The simple fact is that the mere act of registration would cause an organization either to disappear or to become an illegal, "underground" society. No organization could retain open membership and support if it either voluntarily registered or was ordered to do so by official governmental action requiring disclosure of its membership.

Accordingly, the sponsors of the bill misstate the case when they assert that the bill merely performs disclosure functions, and does not outlaw any organization. The fact is that the bill envisages not that any organization will register, but rather that individuals will be relentlessly prosecuted for belonging to organizations which have failed to register.

The bill, then, effectively outlaws organizations within its scope. Our next point is that this scope is unconscionably broad and vague, that it includes organizations who merely exercise constitutional rights, and that its standards are irrelevant to the approbrious conclusions on the basis of which registration is required.

Let us examine the scope of the bill—that is, its defintions of "Communist political" and "Communist-front organizations."

It is apparent that the general definition of a "Communist political organization," contained in section 3 (3) is vague. It refers first to an organization which has "some, but not necessarily all, of the ordinary and usual characteristics of a political party." But what such characteristics, and how many are "some," is neither explained nor self-explanatory. It is, we assume, an "ordinary and usual characteristic" of a political party that it has a treasury and distributes literature, but so does virtually every organization of any kind. In addition, the terms "dominated or controlled by" and "operates primarily to advance the objectives" of the "world Communist movement" are obviously vague, as is the definition of these objectives in section 2.

The vagueness of this general definition is aggravated, rather than removed, by the eight criteria given for its application in section 14 (e). First of all, there is no indication as to how many of these criteria must be present to support a finding that the definition is met. Secondly, each of the criteria begins with the words "the extent to which," without any indication of the extent which is to be deemed significant. Thirdly, most of the criteria have no relevance to the general defintion, vague as it is. Fourthly, the criteria themselves employ many vague terms of no defined or commonly understood meaning.

Thus the first criterion refers expressly to the formulation and carrying out of the policies and activities of the organizations. Clearly, therefore, the mere expression of ideas comes within the criterion, if they are found to have been formulated and carried out to "effectuate the policies of the foreign government" or organization referred to in section 2. The phrase "to effectuate the policies" is a most elastic concept. Since there is no requirement of showing of intent, presumably the purpose may be inferred from the character of the policies carried out. In that case, the first test would be substantially indistinguishable from the second test, discussed immediately below and subject to the same objections. Moreover, the policies being "effectuated" may have no connection whatever with the objectives of the "world Communist movement" referred to in section 2, and indeed may have no relevance to the establishment of "totalitarian dictatorship" in this country.

The second criterion expressly makes "views and policies" a test which, of course, refers to ideas and expressions. This criterion contains no requirement whatever that a totalitarian dictatorship under foreign control shall be advocated. In any case, the section abandons the traditional American creed that ideas are to be tested on their merits, in favor of the notion that they are to be spurned because of a governmental attitude toward others who may advocate the same views.

The third criterion, relating to the extent to which the organization "receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization," again has no necessary relevance to the establishment of a totalitarian dictatorship under foreign domination. The reference to the receipt of "aid, indirectly," is obviously a loose standard. An organization may not even know that it is "indirectly aided" by a foreign source. Moreover, the whole organization and its membership is penalized because support in an unspecified amount comes to it indirectly, and possibly for perfectly laudable purposes, from the source mentioned. If an organization includes among its members Communists or members of other proscribed groups, it could, under the loose definitions in sections 2 and 3, be said to receive support indirectly from a foreign group. This criterion thus is subject to the same objections mentioned below in connection with subsection 6.

The fourth criterion which relates to the organization's sending of representatives to any foreign country for instruction or training in the principles of "the world Communist movement," imposes penalties merely for taking steps to secure information concerning political and economic ideas which are prevalent in large parts of the world. It thus has the noxious effect of stigmatizing educational efforts. If an organization sends or authorizes a delegate to attend any foreign or international conference, and Communists take part therein, it might be held that the delegates were sent for the prohibited purpose. And this is true even though the "instruction" received is wholly unrelated to the establishment of a totalitarian dictatorship in this country.

The fifth criterion is the extent to which the organization "reports" to the foreign government or organization. A mere exchange of communications, no matter how innocuous, can be construed as reporting. Furthermore, the reporting may have no connection with the establishment of a totalitarian dictatorship in this country. Presumably the reading or offering of a resolution or report at an international conference in which foreign Communists participate could be construed as falling within this test.

The sixth test is "the extent to which [the organization's] principal leaders or a substantial number of its members are subject to or recognize the disciplinary power of such foreign government or foreign organization or its representatives." It is not explained who qualifies as a "principal" leader, or how many is a "substantial" number. What is the meaning of the terms "subject to" and "recognize the disciplinary power of such foreign government?" These are words with no clear meaning. It is not apparent how such criteria could prove that the organization as a whole is controlled by the foreign government or movement, and "operates primarily to advance the objectives of the world Communist movement." Some labor unions have democrati-

cally elected Communist leaders, and some may include a substantial number of Communist members. In view of the bill's "finding" in section 2 (5), this fact, in itself would under the sixth test proscribe the union even though neither it nor its leaders have done anything related to the establishment of a dictatorship. It is equally clear that a majority of the members of a group may be branded as foreign agents under this test merely because of the way a minority of their group are alleged to feel about a foreign government or movement. This is guilt by association with a vengeance.

The seventh test has to do with the extent of the resistance or failure of a group to make disclosure of its membership lists, records, or other information, the extent to which its members [in unspecified number] refuse to reveal their membership, and the extent to which meetings or other functions are secret. Certainly under this section it is unnecessary to prove any action toward subordinating our Government to any other, or that the organization operates in any way to advance the objectives of any foreign government or movement described in section 2. Most trade-unions have opposed disclosure of their membership lists and financial or other records. In some parts of our country to be known as a member of a trade-union, or of the NAACP, or of the Progressive Party is to be visited with social ostracism, loss of employment, and even physical violence. Everywhere, to be known as a Communist, even though the Communist Party is a legal organization in the United States, is to meet severe penalties, usually involving at the least the loss of the means of earning a livelihood. Failure or refusal to make a disclosure is thus explicable merely by the natural interest in self-preservation. It has no logical or reasonable connection with foreign domination.

It is very common for all kinds of groups to exclude nonmembers from their meetings on certain occasions. Are these secret meetings? For the same reasons that membership lists are not disclosed, meetings of members are often not disclosed. But we cannot see how the effort to avoid the consequences of community intolerance, which usually meets those who support unpopular causes, shows foreign domination. Accordingly, to permit a finding of such foreign domination based upon such "evidence" is to violate the most elementary principles of justice and due process of law, and to subject lawful groups to suppression for the mere exercise of constitutionally guaranteed freedoms.

The eighth and last test relates to the extent to which some leaders or members of the organization subordinate their allegiance to the United States. The terms "allegiance" and "as subordinate to their orbligations," etc., are most indefinite, and can be measured only by purely subjective standards. For example, the Commission might consider that a person has subordinated his allegiance simply because he believes that a particular policy which is also the policy of a foreign government, like opposition to the Marshall plan and the North Atlantic Pact, is more conducive to world peace and is therefore preferable to the policy of our State Department. If that could be deemed proof of superior allegiance to a foreign government, this provision is substantially indistinguishable from subsection (6) discussed above, and is therefore subject to the same objection. In any case an organization could be branded as a foreign agent, and part of an international criminal conspiracy, merely because some of its

principal leaders and a minority of its members are found to have certain feelings regarding a foreign government or movement, although no act has been performed or even any view expressed which is logically or reasonably germane to the finding to be made.

The definition of a "Communist front organization" in section 3 (4) is no more satisfactory. It includes an organization which is controlled by or operated primarily for the support of a "Communist political organization." Accordingly, all the objections to the vagueness, irrelevancy and scope of the definition of a "Communist political organization" are automatically carried over to the definition of a "Communist front organization." The specific criteria which are to be considered by the Commission do not remedy the faults of this general definition.

Four criteria for determining that a group falls under this definition are set out in section 14 (f). None of these four tests has any necessary connection with domination by a foreign government or the world Communist movement since a finding of "control" by an organizaton found to be a "Communist political organization" is all that is required.

The first of these tests relates to the "identity" of active members as "representatives" of any "Communist political organization." It does not say how many of those active in the organization must be "bad people." What is the meaning of the term, "active in its management," especially as the people involved need not hold any office in the organization, according to the test? What is a "representative"? Again it is clear that the group is to be stigmatized because of the associations or views of a few active people who are not to the liking of a commission. Freedom of speech and association is thus abridged and the doctrine of guilt by association is applied. It is impossible to see how this test bears any necessary relation to domination by a "Communist political association" or the "world Communist movement."

The second test relates to the sources from which an organization's "support, financial or otherwise, is derived." What is the meaning of support other than financial? There is no requirement that it be shown that the group knew that the support was coming from the "bad" source, or that the group shall have done any act logically indicating support for a "Communist political association" or the "world Communist movement." Presumably if Communists are active in the organization it could be held that support is derived from a "Communist political organization."

The third test refers to "the use made by the organization of its funds, resources, or personnel" to promote the political objectives of a "Communist political organization."

There is no need to find an intent to aid a proscribed organization. What political objectives of a "Communist political organization" may not be supported? Many political objectives of the Communist Party are also political objectives of countless other organizations. Suppose it uses one-fiftieth part of its resources for purposes deemed "bad," is that enough? Clearly, the use can be and undoubtedly is primarily the facilitation of the expression of views, and the organization of meetings and publications and broadcasts to express views. Accordingly, in addition to extraordinary vagueness, the penalties provided may attach merely for exercise of speech, press, and assembly.

The fourth test, referring to the extent to which the position taken or advanced—on matters of policy does not deviate from the position taken by any "Communist political organization," is identical with subsection 14 (e) (2) discussed above except for the substitution of the words "Communist political organization," for the words "such foreign government or organization," and is subject to the same objections.

The fact is that the definitions and criteria for both "Communist political organizations" and "Communist fronts" are so vague and so irrelevent to any threat of or aim to create a totalitarian dictatorship that the Commission could require registration of almost any organization in its virtually unfettered discretion.

For example, the Progressive Party, which obtained more than a million votes in the last election, could readily be determined to be a "Communist political organization" by these tests. Because it disapproves of the Marshall plan, the Truman doctrine, aid to Franco Spain, aid to Chiang Kai-shek, compulsory military service, etc., the Commission could, if it desired to do so, find that its policies and activities "effectuate the policies" of Russia and that its "views and policies do not deviate" to a sufficient extent from those of Russia. In addition, the Commission could find that some of its leaders and a "substantial number" of its members are Communists (and thus, by the "findings" in sec. 2 (5) and 2 (9) are persons who recognize the "disciplinary power" of Russian Communists or who owe Russia a "superior allegiance"). Furthermore, the Progressive Party would undoubtedy resist, for purposes of self-preservation, efforts to obtain information as to its membership, and very likely some members of that party (like members of the Democratic or Republican Party) often meet in closed, unpublicized ("secret") meetings.

As for Communist fronts, these can include virtually all labor unions and progressive organizations, because, for example, some of their active members who may also contribute funds are Communists or members of the Progressive Party (already shown to be a likely candidate for designation as a Communist political organization). They may take policy positions which do not deviate from certain policies of the Communist or Progressive Party.

The foregoing analysis demonstrates that the registration provisions of the bill are unconstitutional for the following reasons:

1. Sections 5 and 6 deny the right of employment or of holding nonelective office under the United States and the right to obtain passports, merely for membership in a "Communist political organization." Section 10 makes mere membership in such organization a crime under certain conditions. These penalties and the drastic social and economic consequences of belonging to a prosecuted organization apply without regard to any action, fault, or wrongful intent on the part of the individual. The individuals affected are thus made second-class citizens. They are branded and made to suffer disabilities on the assumption that they are agents of a foreign government or political group, although not the slightest proof is required that in fact they are anything of the kind. This is the clearest application of the unconstitutional doctrine of guilt by association. Under our law, guilt is personal, and our courts have recognized that members of an organization notoriously do not adhere to all of its tenets.

2. Organizations may be destroyed and their members subjected to legal social and economic disabilities merely because of the views they advocate, regardless of how peaceable their conduct, their intent, and regardless of the absence of any incitement to unlawful action. Thus the first amendment, which guarantees freedom of speech and assembly is violated.

3. Registration imposes severe punishment on the organizations and their members. This punishment is imposed on the basis of vague and irrelevant standards, and hence violates the due process clause of the fifth amendment.

A special observation should be made with respect to the provisions of section 11. This section is a clear abridgment of freedom of speech and of the press, since it requires speech and writings to be invidiously labeled regardless of their contents merely because the organization which communicates them has incurred governmental displeasure. It is obvious that the labeling requirement is an effective restraint on the dissemination of information. Thus no periodical could expect to obtain mail subscribers if it is contained in a wrapper which labels it as a virtually treasonable document.

Concerning this section, Charles Evans Hughes had the following comment:

> There is a separate constitutional question as to whether section 11 of the bill is an abridgment of freedom of speech and of the press in violation of the first amendment.
>
> * * * * * * *
>
> There is no question of vagueness or indefiniteness here, because the section applies only to an organization which is registered or as to which there is in effect a final order of the Attorney General requiring it to register. But there may well be a question whether under *Thomas* v. *Collins* (323 U. S. 516 (1945)), supra, such a requirement is not an undue abridgment, because not supported by any clear necessity. The publications and broadcasts which are thus required to be identified as Communist-inspired may be on any subject, however, far removed from any international Communist objective or even any domestic Communist program. With respect to "Communist-front organizations," which might, within the definition, exist chiefly for relief or other humanitarian purposes, the obligation to label themselves as "Communist organizations" appears particularly onerous (p. 419 of hearings on H. R. 5852).

Indeed the entire principle of requiring registration as a condition to the exercise of freedom of speech or assembly, even when done only for the purpose of identification without invidious characterization, is violative of the Bill of Rights. As the Supreme Court said in *Thomas* v. *Collins* (323 U. S. 516):

> As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of free speech and free assembly.

THIS LEGISLATION IS UNNECESSARY

What is the justification offered for the introduction of this repressive bill? It is said that such legislation is needed "to preserve the sovereignty of the United States" (sec. 2 (11)).

If, as the preamble to the bill claims, there exists a conspiracy in this country seeking to destroy our national security and subject us to a foreign dictatorship, then such activity can be prosecuted under existing criminal legislation, which is adequate for that purpose. Aside

from numerous State statutes, there are Federal criminal statutes which punish the following activities among others:

Acting as agent of a foreign government without notification to the Secretary of State (18 U. S. C., sec. 951); private correspondence with foreign government with intent to influence relations with the United States or to defeat measures of the United States (18 U. S. C., sec. 953); possession of property in aid of foreign government for use in violating any penal statute or treaty rights of the United States (18 U. S. C., sec. 957); espionage activities (18 U. S. C., secs. 793–797); inciting or aiding rebellion or insurrection (18 U. S. C., sec. 2383); seditious conspiracy (18 U. S. C., sec. 2384); advocating overthrow of the Government by force (18 U. S. C., sec. 2385); treason (U. S. C., sec. 2381); misprision of treason (18 U. S. C., sec. 2382); undermining loyalty, discipline, or morale of armed forces (18 U. S. C., sec. 2387); sabotage (18 U. S. C., secs. 2151, 2156); importing literature advocating treason, insurrection, or forcible resistance to any Federal law (18 U. S. C., sec. 552); injuring Federal property or communications (18 U. S. C., sec. 1361); conspiracy against the constitutional rights of citizens (18 U. S. C., sec. 371); conspiracy to impede discharge of Federal officer's duties (18 U. S. C., sec. 372).

In addition, organizations engaged in civilian military activity, subject to foreign control, affiliated with a foreign government, or seeking to overthrow the Government by force, are subject to registration requirements under the Voorhis Act (18 U. S. C., sec. 2386). While some of these acts would punish mere advocacy of ideas and are, therefore, unconstitutional, they do not differ in that respect from this proposed bill. If some of these acts have technical deficiencies, these can be remedied by technical amendments. In 1948 the Attorney General suggested certain revisions which later were embodied in S. 595. He then said: "I do not believe that sweeping new legislation is required" (p. 424 of hearings).

The purpose and effect of the Nixon bill, however, is not to avert danger to our Government and democratic institutions. Instead, it is, as appears from the foregoing analysis, designed to suppress or punish dissenting political expression or assembly under the pretext that such expression or assembly constitutes a conspiracy to establish a totalitarian dictatorship under foreign control. This purpose the bill would accomplish by permitting an administrative determination of a treasonable status on the basis of standards and proofs which are relevant not to treasonable activities but to the expression of dissenting opinion.

We have shown that the condemnation of an organization under the provisions of this bill is tantamount to destruction. It is also true that a finding that an organization must register is equivalent to conviction for "special types of odious and dangerous crimes" (*U. S.* v. *Lovett*, 328 U. S. at 216). Yet under the provisions of this bill condemnation would result from the finding of a mere commission composed of political appointees. Thus the requirement of judicially competent proof beyond a reasonable doubt before a court of law and an impartial jury, which is essential under our judicial system for even the most innocuous misdemeanors, would be avoided in cases involving thousands of individuals, perhaps hundreds of organizations, and their fundamental civil liberties.

The fact that court review is available for the Commission's findings does not mitigate the vices inherent in the bill. If the standards are

vague and improper for the purposes of administrative determinations, then the same standards are vague and improper for the purposes of judicial review. Furthermore, the Commission's findings of fact are conclusive if supported by a preponderance of the evidence.

It is the essence of our democracy that the people shall govern themselves. Their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information, and the fair presentation of differing opinions. Without such information our people cannot find their way intelligently to the policies and candidates who suit their wishes and needs and our Government cannot be made responsive to their will.

Because in a democracy the people must have the right to choose the good from the bad ideas, no governmental authority—

> can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. * * * authority * * * is to be controlled by public opinion, not public opinion by authority (*Board of Education* v. *Barnette*, 319 U. S. 624, 641, 642).

Indeed, the Supreme Court has said:

> The very purpose of the first amendment is to preclude public authority from assuming a guardianship of the public's mind through regulating press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not want any government to separate the truth from the false for us. (*Thomas* v. *Collins*, 323 U. S. 511, 545).

This freedom to speak, to write, to hear, to choose, without governmental interference, must carry with it the effective right to persuade to action:

> The first amendment is a charter for government, not for an institution of learning. "Free trade in ideas" means free trade in the opportunity to persuade to action, not merely to describe facts (Rutledge, J., in *Thomas* v. *Collins*, supra, p. 537).

And

> freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order (Jackson, J., in *Board of Education* v. *Barnette*, supra, p. 642).

If these democratic principles are to be made effective, the people must be free to organize into associations, whether political, religious, or economic, without governmental restraint. For it is only through such associations that the will of the people can be brought to bear upon the market place of ideas, and upon the governmental authorities.

Because this bill would deny that freedom of association and expression to all who fail to meet the criteria of political orthodoxy which it prescribes, the bill strikes at the very foundation of democratic government in the United States.

Adherence to democratic principles has made America great—has made it possible for our country to progress in the face of gigantic trials and vast changes in the condition of life in the United States and the rest of the world. Our national interest, and the welfare of every American, requires that this heritage of freedom and democracy shall be cherished by us all, and vigilantly safeguarded against every threatened inroad.

For the reasons we have indicated, we regard this bill as a threat of unprecedented magnitude to the most basic essentials of our democratic institutions. For it sweeeps within its ambit the liberties of

all Americans, making the exercise of liberty subject to the constant surveillance of a governmental commission clothed with almost limitless power.

There is a painful incongruity between this bill and the principles of freedom for which our representatives at the United Nations and in many foreign lands purportedly stand. We had a leading part in sponsoring the universal declaration of human rights which has been approved by the General Assembly of the United Nations. Article 2 of the declaration states:

> Everyone is entitled to all the rights and freedoms set forth in this declaration, without discrimination of any kind, such as * * * political or other opinion. * * *

Article 19 declares:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Article 20 provides in part: "Everyone has the right to freedom of peaceful assembly and association." In our view it is impossible to square this bill with our moral obligation under the Universal Declaration of Human Rights.

If the committee is not now to take inspiration from the Universal Declaration, we sincerely hope that you will at least take warning of the dangers inherent in the bill from another source. The following are some of the laws and decrees enacted by the National Socialist Government of Adolph Hitler:

On July 26, 1933, a law was passed (Reichsgesetzblatt, 1, 538) which provided:

> Conduct violating the duty to loyalty against the Reich and People will be found, particularly if he has tried to insult the prestige of the measures of the National Government.

On May 26, 1933, the following law (Reichsgesetzblatt, 1, 293) was passed:

> Section 1:1. The supreme authorities of the State or the authorities designated by them may confiscate in favor of the State, the property and rights of the Communist Party of Germany and its auxiliary and substitute organizations, as well as the property and rights used or destined for the advancement of Communist endeavors.

And 6 weeks later, the Nazis passed another law (Reichsgesetzblatt, 1, 479, July 14, 1933):

> The provisions of the law regarding the confiscation of Communist property of May 26, 1933 (Reichsgesetzblatt, 1, 293) are applicable to property and the rights of the Social Democratic Party and its auxiliary and substitute organizations, as well as to property and rights used or destined for the advancement of Marxist or other endeavors found by the Reich Minister of the Interior to be hostile to the People and State.

By the charter anexed to the agreement establishing the tribunal for the trial of war criminals (the Nuremberg trial, 1946, 6 Fed. Rules decisions 73–202, 76) certain acts were held to be punishable as crimes against humanity. Among these were "persecutions on political, racial or religious grounds * * *" (supra, p. 78). The judgment of the tribunal which recites the methods by which the Nazis consolidated their power, lists among them:

By "a series of laws and decrees" (supra, p. 81), hostile criticism, "indeed any criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it" (supra, p. 83).

CONCLUSION

It is our conclusion that the enactment of this bill would make possible the introduction in the United States of a despotism abhorrent to American tradition, and destructive of democratic government. It accordingly deserves to be emphatically rejected by this committee.

Mr. Wood. Mr. Counsel, any questions?

Mr. Tavenner. No, sir.

Mr. Wood. Mr. Kearney?

Mr. Kearney. No questions.

Mr. Gerson. I wonder if I could add one sentence to the record which I failed to state before in answering counsel's question?

Mr. Wood. Just a moment.

We appreciate your coming here, Mr. Lamberton, and giving us the views of the National Lawyers Guild.

Mr. Gerson. In giving my answer to counsel's question as to my own membership in the Communist Party, I failed to state that I do so under protest, not conceding the constitutional right of the committee to inquire into my political affiliations, and I would like that to appear in the record. Thank you.

Mr. Tavenner. I would like to ask if there is a representative present in the room of the National Council of the Arts, Sciences, and Professions?

Mr. Wood. Are there any other witnesses in the room who have been requested or who have indicated a desire to be heard at this time?

(No response.)

Mr. Wood. If not, the committee [subcommittee] will stand at recess until 3 o'clock this afternoon. The 3 o'clock session will be an executive session.

(Thereupon, at 12:20 p. m., the subcommittee recessed as above noted.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

WEDNESDAY, MAY 3, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
UN-AMERICAN ACTIVITIES,
Washington, D. C.

PUBLIC HEARING

The subcommittee met, pursuant to call, at 10:30 a. m., in room 226, Old House Office Building, Washington, D. C., Hon. Burr P. Harrison, presiding.

Committee members present: Representatives Burr P. Harrison and Bernard W. Kearney (arriving as indicated).

Staff members present: Frank S. Tavenner, Jr., counsel; Louis J. Russell, senior investigator; William Jackson Jones, investigator; and A. S. Poore, editor.

Mr. HARRISON. The committee will come to order.

Let the record show that this hearing is being conducted by a subcommittee appointed by the chairman, composed of Messrs. Harrison and Kearney. Mr. Kearney will be here shortly.

Mr. Tavenner, will you call your first witness?

Mr. TAVENNER. Mr. Norman Thomas.

Mr. HARRISON. Will you hold up your right hand, please? Do you solemnly swear that in the testimony you give this subcommittee you will speak the truth, the whole truth, and nothing but the truth, so help you God?

Mr. THOMAS. I do.

TESTIMONY OF NORMAN THOMAS

Mr. TAVENNER. You are Mr. Norman Thomas?

Mr. THOMAS. I am.

Mr. TAVENNER. You appear here today in this legislative hearing as a representative of the Socialist Party of the United States of America?

Mr. THOMAS. That is correct, sir.

Mr. TAVENNER. Mr. Thomas, it has been the custom and practice in this and other committees, when conducting hearings on matters relating to a subject such as we have here, to ask each witness who appears whether he is now or ever has been a member of the Communist Party, and I would like to ask you that question.

Mr. THOMAS. I am not now a member of the Communist Party, I have never been a member of the Communist Party, and at least since

1936 I have had far less to do with members of the Communist Party than have the Democrats and Republicans who accepted the endorsement of the ALP in New York.

Mr. TAVENNER. Have you a prepared statement?

Mr. THOMAS. I have a prepared statement which I do not want to submit simply by reading. I wish to follow it, with certain comments as I go along. I reduced it to a fairly brief form for the sake of making it easier to follow, and for the benefit of the press.

Mr. TAVENNER. But you will file it for the record?

Mr. THOMAS. It is filed here. All the absent loved ones will have a copy.

Mr. TAVENNER. Will you proceed?

Mr. THOMAS. Certainly.

Gentlemen, I appear in behalf of the Socialist Party in opposition to the Mundt-Ferguson-Nixon bill, with special reference to those sections which require registration of Communist organizations and their members.

I share your desire to find some effective way to turn on the light concerning the true nature of all forces engaged in political controversy. If such a bill could be worked out, I should welcome the equivalent in politics of a Pure Food and Drug Act. The bill under consideration is not such an act.

I believe that the Communist Party is by its nature undemocratic and in many of its activities thoroughly conspiratorial. It is controlled by the same men who are the dictators of a foreign government. Nevertheless, I think it would be a blow to democracy and to sound public policy to outlaw the Communist Party.

(Representative Kearney enters hearing room.)

Mr. THOMAS (continuing). Whatever the intentions of the authors, the practical effects of this bill would be to outlaw the Communist Party, to drive it still further underground, and to force it to new disguises in the field of electoral action. You gentlemen are sufficiently experienced in the psychology of American politics and the practical workings of parties to realize that no party can function effectively under the regulations you propose. The bill is an indirect way of outlawing the party.

I think it ought to be obvious that that is true. Incidentally and parenthetically, if the Communists should have anyone who had the nerve—and they might—and, shall I say, had a practical joker, he could cause a lot of embarrassment by filing the names of people the Communists hated. These people probably could clear themselves, perhaps easier than Mr. Lattimore is now because of the difficulties he faces, not because I think he is a Communist, but nevertheless it would be quite embarrassing.

All that would have to be done would be for the Communists to turn in the names of people they hated, and these people would be a long time clearing their names.

In other words, it is a completely impractical bill, and I doubt that the Communist Party would attempt to comply with it at all. They simply would go underground.

Despite the sins of the Communist Party, it does not present such a clear and present danger to American institutions and to democratic procedures that we should be justified in outlawing it and driving it still farther into underground conspiracy.

The effect of the bill will be to give not only Communists but organizations dubiously connected with communism the accolade of martyrdom. Through the world America will be advertised as a country which, in a basic respect, violates the democracy it professes.

Remember that European governments are not in a position to outlaw Communist parties. They are too strong. But in France, for instance, there is a very strong non-Communist feeling very suspicious of us, and if we simply outlawed the Communist Party, their confidence in us would go by the board. The good American principle that the ballot is the completely satisfactory substitute for the bullet and an entirely adequate way of effecting the changes the people desire, will seem to have been flouted. There is no existing emergency of a magnitude to justify such an attitude.

What is still worse in the bill before you is the drastic power given to the Government generally, and the special board in particular, to brand individuals, as well as organizations, as "Communist" on the basis of highly subjective opinions which cannot be adequately controlled by any set of interpretations of the standards set down in the act.

I doubt the constitutionality of this bill in its present form, but I am not a lawyer and I am aware that the Constitution is what a particular Supreme Court at a particular time says it is. Conceivably a law may be constitutional which may be unsound in policy. It is on that level that I present my case.

In most respects that case has been very adequately presented before you in the careful memorandum of the American Civil Liberties Union. Am I not right in thinking that that memorandum has been on file for some time? I do not need to repeat its arguments in detail.

Instead, I wish to remind you that a law such as this has to be carried out by men who will operate in a certain political atmosphere. If your bill should become law, three men, for $12,500 annual salary apiece, would have to spend their lives listening to the kind of rumor, charge, and countercharge—often involving individuals of the highest character—in the atmosphere illustrated over in the Senate where the investigation of Senator McCarthy's reckless charges is proceeding under circumstances which undermine public confidence in government. When Senator McCarthy said that he would stand or fall on the Lattimore case, he virtually admitted the irresponsible nature of his other charges. Your bill would encourage this sort of proceeding.

How many was it? First there were 217 Communists in high government positions; then 81; then 57. I think he was thinking of Heinz at the time. Then he comes down to the one case of Lattimore, and says: "Postscript: Remember Amerasia." That is worth remembering. Every politician who finds it easier to hollow disloyalty than to face the hard problems that need to be solved will flock to take advantage of this expedient.

And three men at $12,500 per year. I don't know who would take the job, but times are hard, and there is unemployment in some sections.

We have been the laughing stock of the world, and incidentally our democracy is taking a beating and we are being deprived of clear thinking, which is always difficult.

One of our great political parties—great, that is, in size but not otherwise—is seemingly committed to the formula, "Trumanism is socialism, socialism is communism," a formula under which the President of the United States and his party might be regarded under your bill as constituting a Communist front. I am not talking fantastic nonsense. In recent travels all over the country. I have literally heard men make this sort of argument.

The Senate of the United States itself illustrates this danger. In a reasonable desire of Senators to exclude from America displaced persons who might be under control of a conspiratorial Communist Party, the Senate, without effective opposition from its supposedly liberal members, has adopted the following amazing provision:

> No visas shall be issued under the provisions of this act as amended, to any person who is, or has been, a member of the Communist Party, or any person who adheres to, advocates, and follows, or who has adhered to, advocated, and followed the principles of any political and economic system or philosophy directed toward the destruction of free competitive enterprise and the revolutionary overthrow of representative governments.

This would exclude well-known converts from communism who are now in displaced-persons camps in Europe solely because they are not Communists. The Communists in the displaced persons camps, unless they are placed there as spies, have long since gone home. I think it is justifitable for a government to exclude immigrants who are definitely committed to communism, because of the surrender of their conscience to an outside agency, and that is all.

This provision is also clearly intended to exclude or to scare off all disbelievers in a free enterprise, the principles of which practically every Senator has attacked by voting for some better government action in the interests of the people but contrary to the laws of the market economy.

I would like to be the prosecutor of any Congressman for what he has done to free enterprise in the last 20 years. I could convict him of doing worse than I have ever done. That is up until the Eighty-first Congress. So far this Congress has succeeded in doing nothing with extraordinary skill. Don't forget in church you play to be forgiven for the things you have left undone. This Congress needs that prayer. Don't forget that.

If a displaced person must both disbelieve in revolutionary violence and in any attack on free enterprise, Fascists among displaced persons can be admitted on the ground that while they believe in revolutionary violence, nominally, at least, they believe in free competitive enterprise.

Mosley, the British Fascist, if he should be in a displaced persons camp, under the bill passed by the Senate would have a better chance of entering the United States than the present Prime Ministers of Britain, Sweden, Norway, and the President of France, all of whom are Democratic Socialists and who are our allies.

This is the kind of action which vividly illumines the American scene in which Government agencies will be given the extraordinary powers bestowed upon them by this bill.

Let me offer one final illustration out of many: Last summer, a librarian of a well-known college reported to me that the Bureau of Naturalization was giving out copies of the DAR Manual for Citizenship. Through a friend I obtained a copy of the manual from the

Bureau and found that it equated socialism and communism and said that the American Revolution wasn't really a revolution, that it was to preserve, in capital letters, which ought to flunk them in history. The DAR also has taken a very narrow position on race relations. Hence I protested the Government's use of this misleading document.

My first letter was dated August 31, 1949, and I have not yet had the courtesy of an answer to any of my correspondence. Assistant Commissioner Raymond F. Farrell, however, informed the American Civil Liberties Union that "this Service does not distribute copies of this publication (DAR Manual for Citizenship) and to my knowledge has never done so."

Actually, I can bring plenty of people whom I have stirred on to get it, and they have gotten it from that Bureau. These bureaucrats who haven't the courtesy to answer an inquiry are precisely the bureaucrats who will have a lot to say about people more or less affected by this kind of a law.

Mind you, all this is under that Fair Deal administration which the Republicans have found socialistic. I don't wonder they don't like that type of socialism. Neither do I.

By the way, I wrote the Assistant Commissioner that I was going to testify, and I still haven't heard from him. I don't know if he is unable to read or unable to write.

In short, gentlemen, I am here to argue that your bill would have dangers to the rights of American citizens and to democracy were it to be carried out by the philosophers of Plato's Utopia. Carried out in the atmosphere of our times, and by some of the agencies now functioning, it would at one and the same time be a weapon of tyranny and repression against all sorts of honest, liberal, and radical individuals and organizations and a completely useless tool against trained Communist conspirators.

Thank you.

Mr. HARRISON. Any questions?

Mr. KEARNEY. I haven't any questions, but I do want to thank Mr. Thomas for appearing here and giving us this very fine statement this morning.

Mr. THOMAS. Thank you. I am glad to have an opportunity to appear. This is a subject on which I feel rather strongly, and I have known Communists a lot longer than some of you.

Mr. HARRISON. I desire to thank you for your very refreshing statement. I don't know whether it is opposition so much to the Mundt-Nixon bill as it is opposition to the Senate, but it was very interesting and very refreshing, and this committee shares the high opinion of the American people of your character and standing.

Mr. THOMAS. Thank you, but I do think my statement relates to the bill. I do believe very earnestly that in judging legislation you do not only judge what the words would mean if it were carried out by angels from heaven or by Plato's philosophers, of whom I was always suspicious. You have an atmosphere today created by an excitement which has its causes, because we are in serious times, and the cold war is a fact, and there are conspiracies in the United States. I am not denying that. It is a question of how to proceed.

The atmosphere is illustrated by the kind of speech the president of the American Newspaper Publishers Association gave, in which he

called for honest reporting to show up the evils of the "welfare state" and "communism disguised as democratic socialism." That is completely a dishonest statement in itself. If Mr. Friendly should have his way, we would get no help from the newspapers in checking what goes on in Washington. They would simply "egg on" Mr. McCarthy. I use Mr. McCarthy as a symbol. I hope I won't have to use him as a reality, especially in the Senate.

Thank you.

Mr. TAVENNER. Mr. Mitchell.

Mr. HARRISON. Do you solemnly swear that in the testimony you give this subcommittee you shall speak the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MITCHELL. I do.

TESTIMONY OF CLARENCE MITCHELL

Mr. TAVENNER. Will you state your full name and address, please?

Mr. MITCHELL. My name is Clarence Mitchell. Do you want my office address or home address?

Mr. TAVENNER. Your office address will be sufficient.

Mr. MITCHELL. One Hundred Massachusetts Avenue, Washington, D. C.

Mr. TAVENNER. Do you appear here at this legislative hearing as a representative of the National Association for the Advancement of Colored People?

Mr. MITCHELL. That is correct.

Mr. TAVENNER. Mr. Mitchell, you heard the question that I asked Mr. Thomas as to whether or not he is now or has ever been a member of the Communist Party, and the reasons why I asked him that question. I would like to ask you that same question.

Mr. MITCHELL. I am happy to answer it, sir, but before I do so I would like to say I do not believe it is a fair question. I answer it in this fashion: I have not ever been a member of the Communist Party, and I am not now a member of the Communist Party. I am not a member of any political party. I am a voter in the State of Maryland, and I am registered as an independent. But, as I said, that is an unfair question, because it immediately precludes from appearing before this committee many of the people who would be on trial under a bill of this kind. Presumably there are people who may, for sincere and personal reasons, wish to be members of the Communist Party, and they may want to come here and object to this bill, but I suppose if they had to answer that question they very likely would not come.

Mr. TAVENNER. But don't you think the committee is entitled to knowledge of the real representation that a person makes when he appears before this committee?

Mr. MITCHELL. I think so, and my real representation, of course, is the National Association for the Advancement of Colored People, but the question you ask is whether I am connected with the Communist Party, and that is why I feel that it is not a fair question.

Mr. TAVENNER. Do you have a prepared statement?

Mr. MITCHELL. I do, and with the permission of the committee, I would like to read it, because, as in all these things, if one sticks to just

an oral presentation he is likely to get too long, and if you have no objection I think I can dispose of it in a few minutes.

Mr. TAVENNER. There is another question I would like to ask before you go into that. A subcommittee of this committee has recently been conducting hearings in the Territory of Hawaii, and it was brought out in the course of the testimony there that the national organization of the NAACP withdrew the charter of the local organization in the Territory of Hawaii. Do you have any knowledge of the reasons for which that was done, such as whether or not it was because of Communist infiltration into that particular group?

Mr. MITCHELL. No, I don't have any knowledge of why the charter was withdrawn. As a matter of fact, I did not know it had been. But I am certain there has never at any time been any question of so-called communism in the branch in Hawaii. If the charter was withdrawn, I am sure it was because the branch was inactive or did not conform to our policy. I can understand that administratively it would be difficult to give proper direction to a branch as remote as Hawaii with our limited funds, but I am positive there was no question of communism involved.

Mr. TAVENNER. Very well. Proceed.

Mr. MITCHELL. The National Association for the Advancement of Colored People is opposed to H. R. 7595 now under consideration by your committee.

The NAACP's decision to oppose this proposal is based on our traditional fight to protect civil rights. Our opinion represents the views of American citizens who for 41 years have made up their own minds without coercion or pressure, and who have courageously stood by their convictions.

This bill purports to protect the United States against certain un-American and subversive activities. It is impossible to see how proposals of this kind can do anything other than undermine the basic freedoms of our country.

The powers vested in the three-man loyalty board, which this bill would establish, are so sweeping that almost any organization might be affected, ranging from a college fraternity which holds secret meetings to a labor union which refuses to divulge a list of its members.

The net effect of such a law would be to replace the supposed menace of communism with a concentration camp atmosphere in which all persons who seek to promote social progress would be suspected of activities against the best interests of the United States. Many of them would be unjustly harassed and prosecuted under this law.

This bill could be likened to an effort to jail persons who are the victims of cancer instead of seeking the cause and cure of cancer.

Even under the investigation of Government employees, some amazing things are happening to persons who believe in justice and fair play. Under the program established by Executive order, investigators make an effort to determine whether the persons being investigated associate with colored people if they are white, and whether they associate with white people if they are colored.

We have never been able to determine what relevance this would have to the question of loyalty, but apparently the investigators consider it of great significance. The nearest we have ever come to an explanation of why this kind of data would be important in a loyalty

investigation is that it is part of the pattern allegedly followed by the Communists. This pattern, according to the explanation, includes recognition of colored people as social equals.

In the State of Oklahoma there is a respected colored newspaper known as the Black Dispatch. Mr. Roscoe Dunjee, the editor of this newspaper, is a man of great courage and a splendid example of the things our country stands for. Under the present loyalty program, one of his former employees has been dismissed from a job because she worked for Mr. Dunjee's newspaper. The basis for the dismissal was that at one time the newspaper published an editorial which some investigator thought was indicative of communistic sympathy on the part of the editor. There is nothing to show that the person charged had anything to do with writing the editorial. There is nothing to show that she agreed or disagreed with its contents. But in the eyes of the investigator her employment on the staff of the newspaper was in itself a reason for believing that she was disloyal.

In another situation, the president of a branch of our organization organized a picket line to protest against job discrimination in the Sears, Roebuck Co. He was charged with disloyalty and suspended from his Government employment on the ground that somehow Communists had gotten into the picket lines. There was nothing to show that, if the Communists were in fact present, they were there with his permission. There was nothing to show the movement was stimulated or inspired by the Communist Party. Yet, this employee was suspended because an investigator believed that the action of fighting for economic justice was part of a Communist program.

The whole method of investigation and hearings followed by the top loyalty board is contrary to what we believe citizens should have in the way of a fair trial and the right to confront their accusers. Even if the board finds a man innocent after he has been unjustly accused, who is to repay that person for the anxiety and shame suffered by any loyal citizen who suddenly finds himself charged with being a traitor simply because he was active in the cause of civil rights or some other kind of venture that by an amorphous code is considered un-American?

We have had sufficient experience under the present system of investigating Government employees on charges of disloyalty to know that there are many serious dangers inherent in a trial which is based on evidence submitted by confidential informers. This bill is silent on that point. Therefore, it would be possible for the board established by H. R. 7595 to use on private citizens the same questionable methods now in effect for Government employees.

H. R. 7595 describes a totalitarian dictatorship as a form of Government which limits freedom of speech, freedom of press, and results in maintenance of control over the people through fear, terrorism, and brutality.

There are a great many colored people living in South Carolina, Georgia, and Alabama who know that this language is a very accurate description of life in some parts of those States. Four years ago, a brutal lynching occurred in Monroe, Ga. Those who participated in it lined up in military formation and shot down four colored persons in cold blood. As yet, those responsible for this lynching have not been apprehended. What is worse, the antilynching bill, which would curb this kind of mob violence, is being smothered in committees

headed by Members of the House and Senate who come from the same States in which brutality and mob violence are at their very worst.

The colored people of these States cannot believe that the threat of communism is a more serious menace to their freedom than the actual and present danger of mob violence. Since 1922, when the Dyer antilynching bill was passed by the House, every Congress has failed to give protection against lynching.

We are told that when elections are held in Communist countries, everyone votes, but the results are always the same. The goal of those who oppose the right to vote for colored people is a "free election" in which only white supremacy candidates can win. This is the reality we face in South Carolina and Alabama. To colored people this bill may be a very good bear trap, but what we need is a cage to contain the wildcats who are tearing up our civil rights.

Any colored man who faces the threat of job discrimination that now exists in the Nation's Capital, where he cannot operate a streetcar simply because of his race, would be certain to tell the members of this committee that action on fair employment practice legislation is much more important for the preservation of our democracy than the passage of H. R. 7595.

There is little difference between the language describing treachery and infiltration set forth in this bill and the incredible conduct of certain members of the United States Senate, certain governors of Southern States, and others who are currently engaged in a battle for control of the Democratic Party. On the one side, we have those persons who are seeking to win control under the guise of protecting States' rights, and, on the other side, we have alleged liberals who boast that because they are a part of the Democratic Party they have been able to keep the civil rights legislation from passing by undemocratic methods.

There are some sections of the country where any Government official who deals fairly with racial minorities would be considered a Communist and taking his orders directly from the Kremlin. You gentlemen have only to consult the pages of the Congressional Record to find substantiation of this.

As an illustration, I cite the remarks of a former member of this committee, Congressman John Rankin, of Mississippi, which appear on page 2224 of the Congressional Record for February 22, 1950.

In referring to Fair Employment Practice Legislation which was then under consideration he said: "You are driving through a piece of communistic legislation that Stalin promulgated in 1920." There is not a scintilla of evidence to support that statement; but under H. R. 7595 it could undoubtedly be used to frighten off many sincere but timid backers of FEPC.

Mr. KEARNEY. Will the gentleman yield?

Mr. MITCHELL. Certainly, sir.

Mr. KEARNEY. I come from the State of New York, and we have a fair employment practice bill on our statute books, and I don't think Mr. Stalin had anything to do with the passage of that bill.

Mr. MITCHELL. I am certain he didn't, and I am certain he had nothing to do with the bill under consideration at the time the comment I have read was made. I thank the gentleman for his remark.

It must be a source of great comfort to dictators everywhere that we are all busy fighting the Communists while ignoring the President's civil rights program.

If, as has been announced in this bill, it is the intention of those who framed it to fight communism because communism is an evil, then I would suggest that the attack be positive. I would suggest that we begin now to strengthen the weak spots in our democracy so that it will in fact be the most attractive form of government.

I offer as a positive example of what I mean the recent announcement by the Catholic Church that three of its institutions in the State of Kentucky will admit colored students without discrimination and without regard to any factor except scholastic fitness.

I offer as an example the State of New York, which has passed a law prohibiting segregation in housing that is built with the support of public funds.

I offer as an example the fight our own organization is making before the Supreme Court of the United States against the so-called separate but equal doctrine, under which one segment of the population is set apart and humiliated simply because of color.

The presence of Attorney General J. Howard McGrath and Solicitor General Philip B. Perlman in the United States Supreme Court a few days ago arguing against this odious doctrine is the kind of positive action that is needed to meet the threat, if there be a threat, of any foreign ideologies. Their words, calling for the recognition that all citizens of the United States are equal before the law, show that the Government is officially opposed to such doctrines. This is the best possible way of prolonging the life of democracy. H. R. 7595 is one of the most effective ways of shortening that life.

Under section 2 this bill states that:

> In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

It appears that the framers of this bill were faced with the practical question of whether they should outlaw the Communist Party. However, all of us know that the idea of making a political party unlawful is not acceptable to the majority of the American people.

Subsection (f) of section 4 carefully points out that holding office or membership in a Communist organization shall not constitute a violation of the law. In short, this bill makes communism a crime but does not punish those who openly admit that they are members of the party or Communist-front organizations.

H. R. 7595 proclaims to the people of the United States that evil persons known as Communists live in a house that is carefully described by the wording of the bill. But there is no suggestion that these persons be dealt with. Instead, it is proposed that Government assemble a raiding party to slip around to the kitchen entrance and arrest the so-called servants in the house of communism. In this bill the servants are defined as members of Communist-front organizations who fail to register as such.

In the history of our country there have been many movements and causes which have been considered dangerous to the welfare of the Nation. Time has demonstrated that these have merely been tests of the strength of our free institutions.

During the pre-Civil War period, the fugitive slave laws were willfully and effectively violated by men and women who knew this legislation could mean the death for freedom for all people in the United States. Some of them went to jail. Some of them died. But history has demonstrated the correctness of their position and the value of the service they performed for the Nation.

On the other hand, we have seen various rabble-rousers and miniature dictators who have attempted to establish foreign ideologies or native tyranny in our own time. There have even been those who attempted to establish an arm of the Nazi philosophy in the United States. They have been repudiated by the people.

It should be noted in passing that H. R. 7595 makes no mention of ideologies based on race which were responsible for World War II.

In section 3, this bill provides that the term "Communist political organization" means any organization in the United States having some, but not necessarily all, of the ordinary and usual characteristics of a political party. Section 14 (e) (2) provides that in making a determination of whether an organization is a Communist political organization, among those things it will be necessary to take into consideration is the extent to which the views and policies of the organization do not deviate from those of a foreign government or a foreign organization.

It seems clear that these portions of the two sections mentioned, when taken together, establish a most undemocratic basis for ensnaring innocent people who are members of organizations and groups whose principles and objectives happen to coincide with the announced principles and objectives of the Communist political organization.

These sections say that every generous citizen must closely examine and diligently study the aims and purposes of any organization to which he may make a contribution, no matter how small. The reason he must make such a diligent study is that the giving of a contribution may be considered as an application for membership. Years later he may find that by the simple act of making a small gift to what he considered a worthy cause he has placed his name on a list of subversive individuals in the hands of the Attorney General of the United States. Thus, 25 cents given to a cause that he has forgotten may be the thing that places him among traitors to his country.

Should this bill pass, it undoubtedly will come before the Supreme Court for a determination of its constitutionality.

Successful or unsuccessful, the court action would be of a great benefit to our enemies, because it would reveal that America had resorted to police-state methods in stamping out an unpopular movement. It would say to the world that we have lost faith in our democratic processes and that we find it necessary to use the very totalitarian methods that we now condemn in order to maintain the integrity of our Government.

The NAACP does not believe it is necessary to adopt totalitarian methods in America to protect democracy. I am certain that this is also the view of the majority of American people.

If communism and democracy are mortal enemies and one or the other must be destroyed, then, certainly, we cannot hope to save democracy by making it like communism. If Communist governments deny free speech to their citizens, then we cannot stop their en-

croachments by denying free speech to our own citizens. If communism brands whole classes of citizens as persons who must be interned in concentration camps or assigned to slave labor battalions, we cannot destroy it by consigning our own citizens to a similar fate.

We cannot overcome a real or imagined threat of foreign ideologies by the enactment of harsh legislation which will silence the voice of reform in our own country. If we are to win the present battle for first place in world leadership, we must give positive evidence of action to safeguard the civil liberties of all of our citizens, even those with whom we may vigorously disagree.

Mr. HARRISON. Any questions, Mr. Kearney?

Mr. KEARNEY. No. I want to thank you, Mr. Mitchell, for appearing and for your very fine statement.

Mr. MITCHELL. Thank you.

Mr. HARRISON. Thank you.

Mr. TAVENNER. Mrs. Stewart.

Mr. HARRISON. Do you solemnly swear that in the evidence you give before this subcommittee you shall speak the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. STEWART. I do.

TESTIMONY OF MRS. ALEXANDER STEWART

Mr. TAVENNER. Will you state your full name and address, please?

Mrs. STEWART. Mrs. Alexander Stewart, 625 Fullerton Parkway, Chicago.

Mr. TAVENNER. And you are appearing here as a representative of what group?

Mrs. STEWART. I am appearing in behalf of the Women's International League for Peace and Freedom. I am president of the United States section.

Mr. TAVENNER. You have heard my question to the other witnesses as to whether they are now or have ever been a member of the Communist Party; and the reasons for asking that question. I would like to ask you that same question.

Mrs. STEWART. No; I have never been and am not and do not expect to be.

Mr. TAVENNER. Do you have a prepared statement?

Mrs. STEWART. I do.

Mr. TAVENNER. Will you file it with the reporter as a part of this proceeding, and make such comments as you would like, or read it, if you wish.

Mrs. STEWART. I would like to read it, if I may.

The Women's International League for Peace and Freedom was founded in 1915 in the midst of the First World War. We are celebrating our thirty-fifth anniversary this year. Jane Addams became its first international president, and held this office until her death. She and Emily Greene Balch, who is now honorary international president, are the only two American women to win the Nobel peace award, and they did their work through the Women's International League for Peace and Freedom.

Throughout its history the league has maintained a policy and a program consistent with the ideas of its founders. As an international and interracial organization, it aims to work by nonviolent means for

the establishment of those political, economic, and psychological conditions both at home and abroad which can assure peace and freedom.

Let me quote directly our definitions first of peace, then of freedom, as they appear in our statement of principles and policies.

> Peace: The peace for which we work is much more than the absence of war or maintenance of order through dominance of force. It is a positive principle in human relations and can be found only where there is free cooperation for the common good.
>
> Freedom: Liberty of the human spirit is a basic value. Although freedom must be exercised with much responsibility and individuals in society must accept much control in the common interests, nevertheless they must have the right to contribute to decisions and to express differing opinions through free democratic processes.

The Women's International League for Peace and Freedom has always believed that peace and freedom are inseparable.

The present disintegration of our culture is a demonstration of the deep-seated injustices in our economic and political structures. The only answer to the threat of totalitarianism is the development of a democratic social order in which the dynamic forces of scientific discovery and economic change can be utilized to enrich the life of all the human family.

Since the guaranty of freedom of speech is necessary to a democratic society, the league views with alarm the growing tendency to interfere with freedom of opinion by the use of loyalty tests. We vigorously oppose all forms of discrimination against individuals on the basis of political opinions. Fully recognizing the danger of either Fascist or Communist totalitarianism, the league believes that such forces can be best opposed by open discussion and by the strengthening of our own democratic procedures, rather than by attempts at direct control.

We oppose this bill because it is an attempt at direct thought control. It has the effect of undermining the right of free speech, free thought, and peaceful political action and assembly of people who have committed no crime against the Government but who, as members of a proscribed organization, are subjected to intimidation, persecution, and loss of livelihood.

Section 2 of this bill amounts to a legislative finding that the Communist Party is an agent of a foreign government and that it is attempting to overthrow the United States Government by conspiracy and to substitute a totalitarian dictatorship. Since being a foreign agent without registering as such and attempting to overthrow the Government by force are crimes, a member of the party is automatically found guilty of these crimes without a trial. Such action is diametrically opposed to our constitutional democratic system of justice, under which an individual is considered innocent until proven guilty before a court and jury according to due process of law.

Not only does the Communist Party come within the scope of this legislative finding, but an indeterminate number of organizations may be proscribed if their views on certain subjects coincide with the views of the Communist Party. One of the characteristics of American life, thought, and achievement has been the open expression of the faith, hope, dreams, and ideas of many minds. This process of sharing ideas and ideals has offered the opportunity for rejecting the lesser good and discovering the best. The best in achievement is never reached by one set of ideas alone, but by the challenge which comes in

open expression and exchange of varying viewpoints and even conflicting ideas. It is important to democracy that this growth of thought be encouraged rather than curtailed. This bill, which requires the registration of both permanent and temporary organizations as "Communist political" and "Communist front" on the basis of vague definitions and indefinite criteria, and requires the labeling of all mail and broadcasts, thus preventing an unprejudiced hearing of their views, makes free exchange impossible.

Under section 14 (e) there are eight criteria set forth by which the Subversive Activies Control Board is to determine which organizations shall be required to register. Each criterion begins with the words "the extent to which," but there is no indication what extent is significant. There is, furthermore, no indication how many of the eight criteria must be present.

All of the statements are indefinite and, therefore, difficult to interpret and apply, but the one that seems particularly dangerous is that which reads "the extent to which its views do not deviate from those of such foreign government or foreign organization." If "such foreign government or foreign organization" opposed any part of the foreign or domestic policies of our Government, then opposition to the same policy by any organizations, regardless of its reasons, might make it suspect under this criterion. Organizations which take policy positions that do not deviate from certain policies of the Communist Party, such as opposition to racial discrimination, in favor of national health programs or Federal housing, could be branded as "Communist political" or "Communist-front" organizations and probably be destroyed. Any organization, whether permanent or temporary, which is working for social or economic change, could, under this vague definition, be considered subversive, no matter how democratically it operates.

Any organization which is required to register as a "Communist political" or "Communist-front" organization must submit a complete statement of all moneys received and expended, including the sources from which received by the organization, during the 12 months next preceding the filing of such statement. Organizations required to file as "Communist political" organizations must submit a list of the names and addresses of each individual who was a member at any time during the period of 12 months preceding the filing of the statement.

Any individual may have contributed to one special project sponsored by an organization which is required to register, yet his name is published as a contributor to the organization. An individual may have joined the organization before he knew the organization was considered subversive, yet he is, by the listing, branded as subversive. This registration will immediately brand all members and contributors as subversive. Employers will be suspicious of these listed individuals and there is every possibility that this suspicion will lead to dismissal and blacklisting for future employment.

Although the individual member may not believe in the violent overthrow of the Government, he is considered subversive by the very act of membership in an organization which, under vague definitions, is found to be "Communist political." This makes an individual

guilty by association in spite of the fact that "guilt by association" is clearly against our democratic institutions. It has been true that—

under our traditions beliefs are personal and not a matter of mere association and that men in adhering to a political party or other organization do not subscribe unqualifiedly to all of its platforms or asserted principles (*Schneiderman* v. *United States*, 320 U. S. 118 (1943), p. 136).

We already have laws to punish treason and other criminal acts against the security of our Government. This bill cannot make us more secure. Rather than making us more secure, it destroys confidence, increases fear, and adds to the hysteria in which creative thought and life and considered judgment, so essential to effective democratic procedures, becomes increasingly difficult if not impossible.

The national board of the United States section of the Women's International League issued this statement on loyalty tests and bills in the spring of 1949, with which I wish to close my statement:

The widespread support of bills designed to control subversive activities is a sure sign of the increasing fear sweeping over the American people. Recognition of and respect for basic rights are sure to diminish in times of danger, and rights are readily sacrificed in the name of the public good.

In opposing loyalty bills, Committees on Un-American Activities (Federal and State), the Women's International League for Peace and Freedom is neither blind to present dangers nor indifferent to the public good. We base our opposition on the following grounds:

1. Proposed measures, while purporting to protect democracy, are themselves subversive, since they undermine the basic principle of democracy—faith in the ability of the individual to think for himself.

2. Measures designed to suppress one view, such as communism, are sure to lead to the suppression of other ideas which go counter to accepted social patterns.

3. Such measures obscure the clear distinction that should be maintained between thought and action. No person should be tried or condemned because of opinion, or because of association with others holding unpopular opinions. While it is frequently difficult to distinguish between an idea and an incitement to action, since all ideas sincerely held are likely to eventuate in action, failure to make this distinction leads to a situation in which men are afraid of critical thinking.

4. The climate of unthinking conformity induced by such measures endangers future progress. In all fields, greater knowledge can be obtained only if there is the possibility of criticizing established ideas and of examining all possible alternatives. While no suppressive measures can prevent the freedom of the individual to think for himself, they make such independent thinking more difficult by persecuting those who practice it.

5. The machinery necessary to administer such measures tends toward the creation of a police state in which critical, courageous, and far-sighted citizens are sometimes put at the mercy of ignorant and unscrupulous spies and informers.

Whatever the dangers may be from fifth columns, the greatest danger lies, we believe, in our lack of vigorous faith in our own democratic institutions. The best defense of freedom, we believe, is the practice of freedom.

Mr. HARRISON. Thank you very much.

Mr. TAVENNER. Is there a representative present from the International Workers Order?

(No response.)

Mr. TAVENNER. If not, Mr. Chairman, that is all for today.

Mr. HARRISON. Very well. The committee stands at recess until 10:30 tomorrow morning.

(Thereupon, at 11:40 a. m. on Wednesday, May 3, 1950, a recess was taken until Thursday, May 4, 1950, at 10:30 a. m.)

HEARINGS ON LEGISLATION TO OUTLAW CERTAIN UN-AMERICAN AND SUBVERSIVE ACTIVITIES

THURSDAY, MAY 4, 1950

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

MORNING SESSION

The committee met, pursuant to call, at 11 a. m. in room 226, Old House Office Building, Washington, D. C., Hon. John S. Wood (chairman) presiding.

Committee members present: Representatives John S. Wood, Francis E. Walter, Burr P. Harrison, John McSweeney (arriving as indicated), Francis Case, Harold H. Velde, and Bernard W. Kearney.

Staff members present: Frank S. Tavenner, Jr., counsel; Louis J. Russell, senior investigator; Donald T. Appell, William A. Wheeler, Courtney Owens, and William Jackson Jones, investigators; Benjamin Mandel,, director of research; John W. Carrington, clerk; and A. S. Poore, editor.

Mr. WOOD. The committee will be in order, please.

Let the record show that there are present Messrs. Walter, Harrison, Case, Velde, Kearney, and Wood, a majority of the committee.

Mr. Tavenner, have you some witnesses here this morning?

Mr. TAVENNER. Is there a representative here from the American Federation for Aid to Polish Jews?

Mr. FEDERMAN. Yes.

Mr. TAVENNER. Will you come forward please. I believe you are Mr. Federman?

Mr. FEDERMAN. That is right.

Mr. WOOD. Mr. Federman, will you hold up your right hand, please. Do you solemnly swear the testimony you give this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FEDERMAN. I do.

Mr. WOOD. Have a seat.

TESTIMONY OF SIMON FEDERMAN

Mr. TAVENNER. Will you state your full name, please?

Mr. FEDERMAN. Simon Federman, 625 Ocean Avenue, Brooklyn, N. Y.

Mr. TAVENNER. Do you appear here today as a representative of any particular organization?

Mr. FEDERMAN. Yes. I appear as a representative of the American Federation for Aid to Polish Jews.

Mr. TAVENNER. You probably are familiar with our practice here and in other similar committees in conducting hearings regarding the general Communist question, to ask each witness as he appears the question whether he is now or has ever been a member of the Communist Party, and I would like to ask you that question.

Mr. FEDERMAN. I don't happen to be acquainted with the procedure. I am not a lawyer. I am a businessman. I am not acquainted with the method of questioning. Are you asking this question, sir?

Mr. TAVENNER. Yes. I would like to ask you the same question: Are you now or have you ever been a member of the Communist Party?

Mr. FEDERMAN. I don't hesitate to answer the question, sir, and I will answer it, but I would like to answer it under protest. It seems to me that as an American citizen I have a constitutional right to any opinion in any matter, and it is not my obligation to divulge that opinion to anybody. I don't believe this committee has a right to ask that question of anybody. I think it is unfortunate to ask this question in connection with this testimony. There seems to be no connection between the two.

Mr. WOOD. The question has been propounded to every witness.

Mr. FEDERMAN. I think it would prejudice my testimony. However, I will answer it. I have never been a member of the Communist Party.

Mr. TAVENNER. Do you have a prepared statement?

Mr. FEDERMAN. Yes, I have.

Mr. TAVENNER. I will ask you to file it with the reporter and to make such comments about it as you desire, or if you prefer, to read it.

Mr. FEDERMAN. I would like to read it, if you don't mind.

Mr. WOOD. How long will it take?

Mr. FEDERMAN. Ten or twelve minutes. Is that all right? There may be some questions you would care to ask in connection with it.

Mr. WOOD. I believe, if you don't mind, since the witness who was subpenaed has come into the room, we will ask you to step aside for a little while until we hear the other witness.

Mr. FEDERMAN. Very well. I will.

Mr. WOOD. Thank you.

(The following statement was filed with the committee by Mr. Simon Federman.)

TESTIMONY ON H. R. 7595 SUBMITTED TO THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, MAY 4, 1950

On behalf of the American Federation for Aid to Polish Jews we respectfully wish to state that we are unreservedly opposed to the Subversive Activities Control Act, H. R. 7595, on the grounds of its premise and implications, as well as its inevitable consequences. We disapprove of this bill, first as a relief organization operating for the benefit of the Polish Jews overseas, and second, as a Jewish organization active in American life, and third, as patriotic American citizens devoted to the democratic ideals and principles of these United States of America.

As a relief agency, the American Federation for Aid to Polish Jews, one of the oldest and most reputable Jewish organizations in this country, has for 42 years conducted activities designed to render material and financial assistance to Polish Jews abroad, especially in Poland, and to this day we are engaged in sending aid to the tragically reduced Jewish community there. The continuance of this humanitarian practice, if the above bills are passed, may be interpreted in such manner that our organization would fall within the definition of a subversive organization, for section 3, paragraph 4, of the act defines a Communist front organization as one which is primarily operated for the purpose

of giving aid and support to a Communist foreign government and section 14, paragraph C, characterizes a Communist front organization by the extent to which its funds, resources or personnel are used to further or promote the political objectives of a Communist political organization, Communist foreign government or the world Communist movement. The classification of our organization as a subversive group would not merely result in the obligation to register it with the Attorney General, but would, in effect, cause the cessation of all relief work and therefore completely destroy our Federation as a charitable institution. There can be no doubt that our financial sources would dry up and our membership would dissolve without a trace. The enactment of the bill would thus end the existence of our organization, as it would also wreck any philanthropic institution whose activities similarly extend to proscribed countries (Rumania, Hungary, the Ukraine, Latvia, and others), with even such distinguished organizations as the United Jewish Appeal, the Joint Distribution Committee, and the Organization for Reconstruction and Trade not immune to the danger of being branded as subversive.

Furthermore, the members of our organization see in the proposed bills a distinct threat to American liberties which they have come to love and cherish. Many of our members originated from Poland where they lived, first under the whip of a despotic Czarist regime, then—after Poland was restored to independence in 1918, under a semi-Fascist Polish Government of Pilsudski, Bek, and Grabski. That Government practiced racial and religious bias and subjected its citizens to economic oppression and political persecution, ruling over them through administrative decree and completely flouting universally accepted judicial procedure. Having suffered indescribable hardships and indignities in their native land, these immigrants came to the United States and found here long yearned-for and safeguarded rights of free thought, free speech, free assembly, and unhindered participation in political life. Very soon they became integrated into the American pattern of life, contributing to its progress with their enthusiasm, strength, and abilities, and when emergency arose, sending their sons to lay down their lives in the defense of their adopted fatherland. In time they grew passionately fond of their American citizenship and developed a fierce pride and jealousy of their civil rights. But now they are worried. The projected bills bring back to their memory the nightmarish experiences in their "old" country, where their lives were controlled by arbitrariness and whims of government officials, and where lawlessness prevailed. For here, section 13 of the bill provides for the setting up of a politically appointed board of three people, any one of whom, personally or through an examiner designated by it, or even through the head of a civilian corporation, would be given terrifyingly broad powers of deciding life-and-death matters for the American people. This board would be able to cause the imposition of fantastic penalties of tens of thousands of dollars and tens of years of imprisonment, with loss of right to Government employment, with denial of the privileges to travel abroad, and to enjoy certain tax exemptions, and all this for crimes so vaguely and loosely defined as to make it virtually impossible for any organization or individual in this country to escape conviction. Similarly reminiscent of foreign Fascist practices is the measure proposed in section 11, which requires an organization designated as subversive to place on its literature and correspondence, and into its radio broadcasts the self-incriminating statement that brands it as a Communist organization and therefore, an enemy of the country. Such requirement, which is equivalent to the yellow badges imposed by the Nazis on the Jews, would consign people altogether innocent of overt crimes to the position of outcasts. Our organization recognizes in these bills the potential rule of terror in this country, operating through intimidation, suppression of our civil liberties, and the elimination of all political opposition.

The American Federation for Aid to Polish Jews objects to the proposed bills for yet another reason. Our members, American Jews of Polish decent, have sustained the greatest personal loss in the recent world conflagration when all of their relatives, with very few exceptions, perished in the Hitler massacre, made possible by conditions of war. Realizing that a new war would spell the final extermination of the remaining Jews in Poland, in the rest of Europe, and even the new-born State of Israel, we are deeply concerned with the preservation of peace in the world. We are interested and firmly convinced of the possibility of peaceful relations between the United States, Poland, the Soviet Union, and the other countries behind the so-called iron curtain, and are supporting all forces in American life working toward that end. But then, this activity may be interpreted, according to section 14, as "policies not deviating from those of foreign govern-

ments of foreign organizations" or, as "giving aid and support to Communist political organizations or Communist foreign governments or world Communist movements," according to section 3, since advocacy of peace happens to be the stated position of the Governments of Poland and of Soviet Russia, and the stand of the Communist Party. Our organization would thus be declared a Communist front. In this case we would be brought to task as a result of guilt by association, a procedure repugnant to the best American legal traditions and contrary to the decision of the United States Supreme Court.

Our opposition to the bills stems from still another source. We must reject the bills because their basic premise adds to the threat of a new world conflict, with all the dreadful consequences to the peoples of the world generally, and the Jewish people in particular. The entire reasoning of the measures is hinged on the thesis that a foreign dictatorial power is employing the vilest methods to subjugate the whole world, to overthrow the Government of the United States, and to impose its sinister rule on all of us, soliciting for this purpose the aid of countless organizations and individuals, trained to penetrate and control the guileless and unwary American people. It is clear that the acceptance of such premises would leave our Government with no alternative other than to declare a war on our external enemy combined with a campaign of ruthless ferreting out the internal foes. In contrast to this conclusion, we of the American Federation for Aid to Polish Jews, are convinced that our country is in no immediate danger from the outside and, in fact, is strong enough to face any hostile forces, if such exist, without recourse to hysterical alarm or such draconic measures as the two bills in question.

Moreover, the American Federation for Aid to Polish Jews fears the implications of the bills as an organization that is active on the general American scene. Along with the rest of the Jewish people who are mourning the loss of 6,000,000 of their number at the hands of the Nazi monster, we view with the deepest concern the progress of the resurrected Nazi group on the road to restored power in Germany. We are disturbed by the revived anti-Semitism in that country, by the recurring excesses against the Jews forced to live there, and we accordingly have taken our place beside all those enlightened Americans who are opposing the tolerated renazification of Germany, both as a danger to the Jewish people, and as a menace to the future of humanity. In addition, as Jews we know the full meaning of racial and religious discrimination which has cost us so dearly bigotry from American society. We, therefore, support such measures as FEPC, bills against anti-Semitism, Jim Crowism, and other progressive legislation. But these views are also held by organizations considered subversive, and for this reason alone our Federation would be designated as a Communist organization, with all the drastic consequences that follow such classification. Here, too, we would be charged with guilt by association.

Finally, as patriotic Americans who are loyal to the noblest moral principles inherent in American traditions, we find it obnoxious to have any American organization or individual condemned and criminally prosecuted not for violations of law, but for alleged purposes and for unorthodox thoughts as intended by section 2 of the act, with the entire procedure handled in the administrative way, without benefit of judge and jury which now are guaranteed even for small misdemeanors. We dread the prospect of a situation wherein a Government agency will be empowered to judge which political parties should exist or which organizations should function. We also fear that on this continent a state will be created in which thousands of American citizens would be spying on each other out of misguided patriotism or in self-protection; where the population would be in constant fear of expressing a thought or sentiment because it may prove later to be similar to those of subversive groups. In this manner, the American people will be completely deprived of their basic rights of free thought and free speech, and would be excluded from the process of suggesting a reform or voicing a criticism of the status quo, or offering an improvement in the policies of our Government. A police state will thus be established in our country, under the pretext of resisting foreign dictatorship and protecting our democratic way of life.

In expressing our firm opposition to the proposed bills the American Federation for Aid to Polish Jews prays and trusts that the House of Representatives will recognize the dangers inherent in such legislation, and will repudiate H. R. 7595, thus averting the destruction of our country as a land of democracy and freedom.

STATEMENT OF THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION,
New York, N. Y., March 21, 1950.

Mr. JOHN S. WOOD,
Chairman, Committee on Un-American Activities, House of Representatives, Congress of the United States,
Washington, D. C.

DEAR MR. WOOD: I thank you for your letters of March 2 and March 9.

My continued absences from the office on bar association trips has prevented my giving earlier attention to your letter.

At the request of the Senate Committee on the Judiciary, the American Bar Association has, through its bill of rights committee, delivered on opinion to the Senate committee on the constitutionality of the proposed Subversive Activities Act. I appreciate your invitation to appear before the committee but my engagements will not permit my doing so. Of course, the opinion which has been rendered is available to your committee through the Senate Judiciary Committee if you are interested in having it.

Sincerely yours,

HAROLD J. GALLAGHER.

The following is a portion of a letter from Mr. William A. Schnader, chairman of the standing committee on bill of rights of the American Bar Association to the Honorable Pat McCarran, chairman, Committee on the Judiciary, United States Senate, concerning the constitutionality of S. 2311, a bill to protect the United States against certain un-American and subversive activities. H. R. 7595, a bill introduced by the Honorable Richard Nixon, of California, and referred to the House Committee on Un-American Activities, is a companion bill to S. 2311, introduced in the House on March 7, 1950. Therefore, the constitutionality of S. 2311, as prepared February 24, 1950, by William A. Schnader, applies equally well to H. R. 7595. The letter reads in part as follows:

"S. 2311 is entitled 'A bill to protect the United States against certain un-American and subversive activities, and for other purposes.'

"Section 2 of the bill details 11 findings by Congress as a result of evidence adduced before various committees of the Senate and of the House. The first, second, and eleventh of these findings are as follows:

"(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary political movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in all the countries of the world through the medium of a single world-wide Communist political organization.

"(2) The establishment of a totalitarian dictatorship in any country results in the ruthless suppression of all opposition to the party in power, the complete subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

* * * * * * *

"(11) The recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

"The intervening findings relate the identity between the sole political party and the government in a totalitarian dictatorship; the fact that the world Communist movement is directed and controlled by the Communist dictatorship of a foreign country; that the Communist dictatorship in that foreign country, in furthering the purposes of the world Communist movement, causes the establishment of and utilizes in various countries political organizations which are con-

stituent elements of the world Communist movement; that such political organizations are not free and independent organizations but are mere sections of a single world-wide Communist organization and are controlled and directed by, and subect to the discipline of, the Communist dictatorship of that foreign country; that the political organizations thus established in various countries endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the Communist totalitarian dictatorship of that foreign country; that such political organizations seek to attain their objectives by conspiratorial and coercive tactics instead of through the democratic processes of a free elective system; that, in addition, these Communist organizations operate to a substantial degree through organizations commonly known as Communist fronts, which are generally maintained in such a way as to conceal the facts as to their true character and purposes and their membership; that to attain the obectives of this Communist movement, travel of members, representatives, and agents of the movement from country to country is essential; that in the United States the participants in the world Communist movement, in effect, repudiate their allegiance to the United States and transfer it to the foreign country which controls the world Communist movement; and that, in pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has by the foregoing methods, already caused the establishment in numerous foreign countries, against the will of the people of those countries, of ruthless Communist totalitarian dictatorships, and threatens to establish similar dictatorships, and threatens to establish similar dictatorships in still other countries.

"S. 2311 seeks in a number of ways to protect the security of the United States and the existence of free American institutions against the clear and present danger which the Congress believes to exist:

"1. Section 4 (a) provides that—

" 'It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual. * * *'

"For the purposes of section 4 (a), 'totalitarian dictatorship' is defined as—

'* * * a form of government, not representative in form, characterized by (1) the existence of a single political party, with such identity between such party and its policies and the government and governmental policies of the country in which it exists as to render such party and the government itself indistinguishable for all practical purposes, and (2) the forcible suppression of all opposition to such party.'

"We pause here to point out that, by definition, a totalitarian dictatorship would necessarily put an end by force to the rights of free speech, press, and assembly.

"2. Except with special authority, it is unlawful for any officer or employee of the United States or of any Federal agency to communicate to any representative of a foreign government or to any officer or member of a Communist organization information obtained in the course of his official duties or employment of a kind which has been classified by or with the approval of the President as affecting the security of the United States (sec. 4 (b)).

"3. It is made unlawful for any agent or representative of any foreign government or any officer or member of a Communist organization knowingly to obtain, receive, or attempt to obtain or receive, from any officer or employee of the United States, or any department or agency thereof, any information which such officer or employee is prohibited from revealing (sec. 4 (c)).

"4. Every Communist political organization and every Communist-front organization is required to register with the Attorney General, and in connection with registration to file a registration statement containing certain detailed information. Any organization registered with the Attorney General must annually file with him a report bringing the information included in the registration statement up to date, and each Communist political organization so registered is required to keep accurate records of the names and addresses of its members and of persons who actively participate in its activities. Organizations of both types are required to keep accounts of moneys received and expended (sec. 7). There is no criminal sanction for a violation of this section unless there is in effect a final order of the Subversive Activities Control Board, requiring the organization to register (sec. 16).

"5. Every individual who is a member of any organization which he knows to be registered as a Communist political organization, but which has failed to include his name upon its list of members filed with the Attorney General, is required to register within 60 days after obtaining such knowledge (sec. 8). Again, no criminal sanction applies in the absence of a final order of the Subversive Activities Control Board.

"6. The Attorney General is required to keep a register of Communist political organizations and a register of Communist-front organizations which must include certain detailed information, which shall be kept open for public inspection, with certain provisos (sec. 9).

"7. A Subversive Activities Control Board is established for the purpose of holding hearings, making determinations, and issuing orders to register in cases brought before it by the Attorney General whenever he has reason to believe that any organization which has not registered as required by the act is in fact an organization of the kind required to be registered, or that any individual who has not registered is in fact required to do so (secs. 13 and 14).

"There is provision for judicial review of orders made by the Board (sec. 15).

"8. It is provided that, when there is in effect a final order of the Board requiring an organization to register as a Communist political organization, it shall be unlawful for any member of such organization who knows that the order has become final in seeking or accepting any office or employment under the United States to conceal the fact that he is a member of such organization, or to hold any nonelective office or employment under the United States. There is a correlative provision rendering it unlawful for any officer or employee of the United States to appoint or employ any individual as an officer or employee of the United States with knowledge that such individual is a member of an organization against which a final order to register is in effect (sec. 5).

"Strangely enough, under this section it would not be unlawful to employ a member of a Communist political organization which had registered voluntarily.

"9. It is rendered unlawful—again when a final order of the Board requiring an organization to register as a Communist political organization is in effect—for any member of such organization, with knowledge that such order has become final, to apply for, or use, or attempt to use any passport issued by or under the authority of the United States, or for any officer or employee of the United States to issue or renew a passport for any such individual, knowing that such individual is a member of such organization (sec. 6).

"10. It is made unlawful for any individual to become or remain a member of any organization if he knows that a final order of the Board is effective requiring such organization to register under section 7 of the act and more than 30 days have elapsed since such order became final and such organization is not registered under section 7 (sec. 10).

"11. It is rendered unlawful for any organization which is registered under section 7, or against which a final order under section 7 is effective, or for any person acting on its behalf, to transmit through the mails or by any means or instrumentality of interstate or foreign commerce any publication, unless such publication and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the legend 'Disseminated by [name of organization], a Communist organization,' or to broadcast any matter over any radio or television station in the United States unless introduced by the statement, 'The following program is sponsored by [name of organization], a Communist organization' (sec. 11).

"12. Tax exemptions are denied to any organization if it is registered under section 7 or if there is a final order requiring it to register under section 7, and tax deductions are disallowed for any contribution to any such organization (sec. 12).

"Section 3 of the act contains careful definitions of 'organization,' 'Communist political organization,' 'Communist-front organization,' 'Communist organization,' 'publication,' and 'interstate or foreign commerce.'

"For a violation of section 4 of the act, the penalty is a fine of not more than $10,000 or imprisonment for not more than 10 years, or both, and disqualification to hold any office or place of honor, profit, or trust under the United States.

"For violations of section 5, 6, 7, 8, 10, or 11 of the act, section 16 provides fines ranging from $2,000 to $5,000, or, in the case of individuals, imprisonment for not less than 2 nor more than 5 years, or both.

"Many of the objections urged against H. R. 5852 of the Eightieth Congress (the Mundt-Nixon bill) were directed at the vagueness of that bill's provisions. In our opinion, these objections have been eliminated in S. 2311.

"We have little difficulty in reaching the conclusion that the provisions of sections 5 to 16, inclusive, are within the power of the Congress.

"We repeat the finding made by the Congress in section 2 (11): 'The recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent Nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.'

"While findings of the Congress are not conclusive on the courts, they cannot lightly be set aside when, as here, they are based on extensive hearings and the examination of many witnesses and exhibits. See *Nebbia* v. *New York* (291 U. S. 502, 516 (1934)) and compare *United States* v. *Butler et al.* (297 U. S. 1 (1936)) with *Mulford et al.* v. *Smith et al.* (307 U. S. 38 (1939)).

"That the activities of Communist and Communist-front organizations in the United States present a clear and present danger to our institutions would probably be the consensus not only of the Congress but of a majority of the well-informed population of the United States today. Indeed, it would be difficult for any court to assert with any factual justification that the findings set out in section 2 of S. 2311 are unwarranted and that they cannot, therefore, be accepted as a reasonable basis for the preventive measures afforded by secitons 5 to 16 of the bill.

"We do not mean to say that there cannot be vigorous difference of opinion regarding the policy of the bill, but we have not been requested to express our opinion on policy. It is only the constitutional aspects of the bill which we are considering.

"Sections 5 to 16 do not prohibit membership in a Communist or Communist-front organization. They merely require that the existence of such organizations be publicly made known by registration with the Attorney General, and that membership in them likewise be made public.

"Assuming any element of danger to our free institutions, to the sovereignty of the United States, and to the continued existence of our representative form of government resulting from the activities of such organizations, it is our view that the Congress has the power to require the publicity involved in the requirements for registration and disclosure; to curtail the use of passports by members of such organizations; and to withhold income-tax exemptions from, and to withdraw the allowance of income-tax deductions for contributions to, such organizations.

"The validity of the registration provisions will doubtless be attacked as in conflict with the decision of the Supreme Court in *Thomas* v. *Collins* (323 U. S. 516, 1945).

"That case involves the constitutionality of a conviction for violation of a restraining order issued under a Texas statute requiring labor organizers to register with the secretary of State and to procure organizers' cards from that official before soliciting membership in labor unions. Despite the order, the defendant Thomas made a speech and issued a general and a specific invitation to membership in the union. Holding that the sentence for contempt rested as much on the speech and general invitation as on the specific invitation, the former being protected by the first amendment, the Court reversed the conviction, saying, at page 540:

" 'If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious, or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the first amendment.'

"And the Court cited with approval the controlling principle in *De Jonge* v. *Oregon* (299 U. S. 353 (1937)), at page 365, as follows:

"'* * * The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

"However, there is a vast difference between the requirement that an organizer for a labor union register, and a requirement that Communist and Communist-front organizations and their members register, in view of the legislative findings of S. 2311 to which we have referred.

"The existence of labor unions is in accordance with the policy of the United States as declared by the Congress in legislation going back many years. Membership in a labor union cannot, ipso facto, be regarded as in any way hostile to the principles of freedom underlying our institutions and guaranteed by the Constitution. On the other hand, Communist and Communist-front organizations, as defined in S. 2311, have as their objective the destruction of our freedoms and the substitution for our present representative government of a dictatorship under foreign control.

"There can be no danger to American institutions in the mere existence of a labor union; there can readily be clear and present danger in the covert existence of a Communist or Communist-front organization as defined in S. 2311.

"We may believe that the fruition of the danger involved in the activities of Communist and Communist-front organizations in this country is a long way off, but the Congress is not obliged to wait until the success of the conspirators is imminent before taking appropriate protective steps.

"In any event, we fail to see in the requirements of registration and disclosure any violation of the fundamental rights of those required to register and reveal their identity. Indeed, the principle of registration has received judicial sanction (*Cantwell* v. *Connecticut* (310 U. S. 296, 306 (1940)), *New York ex rel. Bryant* v. *Zimmerman* (278 U. S. 63 (1928))).

"The most troublesome question presented by S. 2311 relates to the validity or invalidity of section 4 (a), which we have previously quoted.

"The statute has been made definite to conform to the standards of *Winters* v. *New York* (333 U. S. 507). In our opinion, it satisfied the requirements of the three other cases on the point: *United States* v. *Petrillo* (332 U. S. 1), *Gorin* v. *United States* (312 U. S. 19), *Kovens* v. *Cooper* (93 L. Ed. 379).

"No person or organization is named in section 4 (a)—the criminal section—and therefore no question of bill of attainder is involved.

"May the Congress constitutionally proscribe a conspiracy to perform an act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship—one of the characteristics of which is to be forcible suppression of all freedoms—the direction and control of which is to be vested in a foreign government, foreign organization, or foreign individual?

"It must be generally accepted that the Congress has inherent power to do all things necessary to preserve the foundations of organized government as it exists under the Constitution, to protect the sovereignty of the United States, and to prevent the overthrow of government by unlawful means.

"This inherent power has been recognized to the ultimate in time of war. As between the exercise of any powers deemed necessary for the successful prosecution of a war and the rights of the individual, the latter must always give way.

"In *Schenck* v. *United States* (249 U. S. 47 (1919)), the Supreme Court upheld a conviction based on the mailing of printed circulars in pursuance of a conspiracy to obstruct the recruiting and enlistment service, contrary to the Espionage Act of 1917. At page 51, Mr. Justice Holmes said:

"'But, it is said, suppose that that was the tendency of this circular, it is protected by the first amendment to the Constitution. Two of the strongest expressions are said to be quoted respectively from well-known public men. It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in *Patterson* v. *Colorado* (205 U. S. 454, 462). We admit that in many places in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is

done (*Aikens* v. *Wisconsin* (195 U. S. 194, 205, 206)). The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force (*Gompers* v. *Bucks Stove & Range Co.* (221 U. S. 418, 439)). The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in section 4 punishes conspiracies to obstruct as well as actual obstruction. If the act (speaking, or circulating a paper), its tendency, and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime (*Goldman* v. *United States* (245 U. S. 474, 477)).'

"In *Gitlow* v. *People of New York* (268 U. S. 652 (1925)), the Supreme Court sustained the conviction of four individuals for the statutory crime of criminal anarchy, which was defined as 'the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means.' The advocacy of such doctrine either by word of mouth or writing is a felony.

"The defendants were Communists and had circulated the left-wing manifesto advocating practically the same conduct which is the program of the present-day Communist organizations.

"The Court said at page 666:

" 'It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom (2 Story on the Constitution, 5th ed., sec. 1580, p. 634; *Robertson* v. *Baldwin* (165 U. S. 275, 281); *Patterson* v. *Colorado* (205 U. S. 454, 462); *Fox* v. *Washington* (236 U. S. 273, 276); *Schenck* v. *United States* (249 U. S. 47, 52); *Frohwerk* v. *United States* (249 U. S. 204, 206); *Debs* v. *United States* (249 U. S. 21, 213); *Schaefer* v. *United States* (251 U. S. 466, 474); *Gilbert* v. *Minnesota* (254 U. S. 325, 332); *Warren* v. *United States* ((C. C. A.) (183 Fed. 718, 721))). Reasonably limited, it was said by Story in the passage cited, this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the Republic.

" 'That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question (*Robertson* v. *Baldwin* (supra, p. 281), *Patterson* v. *Colorado* (supra, p. 462), *Fox* v. *Washington* (supra, p. 277), *Gilbert* v. *Minnesota* (supra, p. 339), *People* v. *Most* (171 N. Y. 423, 431); *State* v. *Holm* (139 Minn. 267, 275), *State* v. *Hennessy* (114 Wash. 351, 359), *State* v. *Boyd* (86 N. J. L. 75, 79), *State* v. *McKee* (73 Conn. 18, 27)). Thus it was held by this Court, in the Fox case, that a State may punish publications advocating and encouraging a breach of its criminal laws; and, in the Gilbert case, that a State may punish utterances teaching or advocating that its citizens should not assist the United States in prosecuting or carrying on war with its public enemies.

" 'And, for more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press, said Story (supra) does not protect disturbances to the public peace or the attempt to subvert the Government. It does not protect publications or teachings which tend to subvert or imperil the Government or to impede or hinder it in the performance of its governmental duties (*State* v. *Holm* (supra, p. 275)). It does not protect publications prompting the overthrow of Government by force; the punishment of those who publish articles which tend to destroy organized society being essential to the security of freedom and the stability of the State (*People* v. *Most* (supra, pp. 431, 432)). And a State may penalize utterances which openly advocate the overthrow of the representative and constitutional form of government of the United States

and the several States by violence or other unlawful means (*People* v. *Lloyd* (304 Ill. 23, 34)). See also *State* v *Tachin* (92 N. J. L. 269, 274) and *People* v. *Steelik* (187 Cal. 361, 375). In short, this freedom does not deprive a State of the primary and essential right of self-preservation, which, so long as human governments endure, they cannot be denied (*Turney* v. *Williams* (194 U. S. 279, 294)). In *Toledo Newspaper Co.* v. *United States* (247 U. S. 402, 419) it was said: "The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests; and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions".'

"We realize that in its recent decisions the Supreme Court has used strong language in upholding the rights of the individual under the first amendment. Thus, in *Terminiello* v. *Chicago* (337 U. S. 1 (1949)), Mr. Justice Douglas, speaking for the majority of the Court in a 5-to-4 decision said, at page 4:

" 'The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in *De Jonge* v. *Oregon* (299 U. S. 353, 365), it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.

" 'Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute (*Chaplinsky* v. *New Hampshire* (supra, pp. 571–572)), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. See *Bridges* v. *California* (314 U. S. 252, 262); *Craig* v. *Harney* (331 U. S. 367, 373). There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.'

"In S. 2311, the Congress has declared, after long and tedious hearings, that there is a clear and present danger 'of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.'

"Short of actual attack by force, what more serious threat can there be to constitutional government and to the Bill of Rights itself than a substantial contribution to the establishment within the United States of a totalitarian dictatorship under the direction and control of a foreign government?

"It must not be overlooked that section 4 (a) does not interfere with free speech, the freedom of the press, or the right of assembly as such. It interdicts conspiracies to perform acts which would substantially contribute to the unlawful result involved in the establishment here of a totalitarian dictatorship under foreign control.

"The Terminiello case reversed a conviction under a Chicago ordinance prohibiting persons from making or assisting in making, inter alia, breaches of the peace. The defendant was charged with violating the ordinance by violent speech at a public meeting.

"Similarly, in *De Jonge* v. *Oregon*, the Supreme Court set aside a conviction under a State statute for assisting in the conduct of and speaking at a public meeting called for the purpose of protesting against certain raids on workers' halls and homes and against the shooting of striking longshoremen by Portland police. In his speech, the defendant urged the audience to assist in obtaining members for the Communist Party and to attend the meeting of the party to be held on the following evening. On searching the hall, the police found a quantity of Communist literature. In its opinion, the Supreme Court said (299 U. S. at 359):

" '* * * The stipulation does not disclose any activity by the defendant as a basis for his prosecution other than his participation in the meeting in question. Nor does the stipulation show that the Communist literature distributed at the meeting contained any advocacy of criminal syndicalism or of any unlawful conduct. * * *'

"In *Herndon* v. *Lowry* (301 U. S. 242 (1936)), the Supreme Court set aside a conviction under a Georgia statute for holding meetings for the purpose of recruiting members of the Communist Party and soliciting contributions for its support; but in so doing the Court referred at length to its previous decision in *Gitlow* v. *New York*, supra. At page 258 the Court said:

" 'It is evident that the decision sustaining the New York statute furnishes no warrant for the appellee's contention that, under a law general in its description of the mischief to be remedied and equally general in respect of the intent of the actor, the standard of guilt may be made the "dangerous tendency" of his words.

" 'The power of a State to abridge freedom of speech and of assembly is the exception rather than the rule, and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the State. Legislation which goes beyond this need violates the principle of the Constitution. * * *'

"In essence, the Court held that, as construed by the Supreme Court of Georgia (p. 262)—

" '* * * a defendant need not advocate resort to force. He need not teach any particular doctrine to come within its purview. Indeed, he need not be active in the formation of a combination or group if he agitate for a change in the frame of government, however peaceful his own intent. If, by the exercise of prophecy, he can forecast that, as a result of a chain of causation, following his proposed action a group may arise at some future date which will resort to force, he is bound to make the prophecy and abstain, under pain of punishment, possibly of execution. Every person who attacks existing conditions, who agitates for a change in the form of government, must take the risk that if a jury should be of opinion he ought to have foreseen his utterances might contribute in any measure to some future forcible resistance to the existing government he may be convicted of the offense of inciting insurrection. Proof that the accused in fact believed that his effort would cause a violent assault upon the State would not be necessary to conviction. It would be sufficient if the jury thought he reasonably might foretell that those he persuaded to join the party might, at some time in the indefinite future, resort to forcible resistance of government. The question thus proposed to a jury involves pure speculation as to future trends of thought and action. Within what time might one reasonably expect that an attempted organization of the Communist Party in the United States would result in violent action by that party? If a jury returned a special verdict saying 20 years or even 50 years the verdict could not be shown to wrong. The law, as thus construed, licenses the jury to create its own standard in each case. * * *'

"The distinction between the Gitlow case and *Herndon* v. *Lowry* is that in the former the New York statute 'denounced as criminal certain acts carefully and adequately described,' whereas the Georgia statute contained 'no reasonably ascertainable standard of guilt.'

"It is notworthy that in no case has the Supreme Court denied the power of the Congress to adopt such measures as it deems necessary to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government—three functions which belong to the Nation as distinguished from the States.

"Section 4 (a) of S. 2311 specifically defines the nature of the offense at which it is aimed. A person must 'knowingly' combine, conspire, or agree to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, the direction and control of which is to be vested in or exercised by or under the domination or control of any foreign government, foreign organization, or foreign individual. And, for the purposes of the subsection, 'totalitarian dictatorship' means a form of government not representative in form, characterized by (1) the existence of a single political party so organized as to render the party and the government itself indistinguishable and (2) the forcible suppression of all opposition to such party. That would mean the end of such rights as freedom of speech, freedom of the press, and peaceable assembly.

"Anyone entering into a combination, conspiracy, or agreement to do any act aimed at the consummation of the establishment here of a totalitarian dictatorship under the domination of a foreign power could not help knowing that he was violating the prohibition of the statute.

"We do not think that the guaranties of the first amendment entitle any individual or group of individuals to engage in conspiracies to perform acts aimed at the destruction of the very freedoms which the first amendment guarantees.

"And it would be a rather drastic conception of judicial power which would authorize any court to say that, after many months of hearings and the examination of a legion of witnesses and voluminous documents, the Congress was not justified in finding as a fact that the present-day activities of Communist and Communist-front organizations present a 'clear and present danger to the security of the United States and to the existence of free American institutions.'

"Unless any court would be willing to say that the findings of the Congress were wholly unwarranted, we believe that it would be bound to sustain as constitutional in its entirety S. 2311."

STATEMENT OF ZECHARIAH CHAFFEE

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., March 15, 1950.

Hon. JOHN S. WOOD,
House Committee on Un-American Activities,
House Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: If you will permit me to file this statement in opposition to a bill (substantially like S. 2311) entitled "To protect the United States against un-American and subversive activities," I shall be most grateful.

Inasmuch as it is not infrequent to misunderstand and even misrepresent the motives of citizens who have opposed certain anti-Communist measures, I want to let you know briefly what sort of person is here objecting to this bill. A member of the Rhode Island bar, I have taught law at Harvard Law School since 1916, being now Langdell professor. My courses for many years have comprised equity, negotiable instruments and banking law, trade-marks, and unfair competition. I have published many books and articles on those subjects, besides three books on freedom of speech and press, and have occasionally advised practitioners on problems within my field of teaching. I have participated in several cases in the United States Supreme Court and elsewhere involving freedom of speech and religion, but always as a friend of the court. Never have I been retained or paid by any individual or private organization for work involving civil liberties, because I wish to consider only the interest of the public when I speak or write on such matters. I was consultant for the National Commission on Law Observance and Enforcement, formerly a member of the United Nations Subcommission on Freedom of Information and of the Press, and one of the United States delegates to the United Nations Conference on Freedom of Information in Geneva. Also, I was the draftsman of the Federal Interpleader Act of 1936 (now 28 U. S. Code, secs. 1335, 1397, 2361), under which millions of dollars in conflicting claims against insurance companies and other corporations have been expeditiously adjudicated. My chief activity, outside of teaching and scholarship, has been serving for 40 years as a director of Builders Iron Foundry, a manufacturing business in Providence which has done important work for the Government at various times; since 1943 I have been chairman of the board.

In short, I am one of the large number of old-fashioned Americans trying to do their own jobs as well as they can, who care a good deal about our Bill of Rights and about maintaining American traditions of freedom and tolerance. We like the kind of country in which we grew up, and we want it to stay that kind of country for our children and our grandchildren. Because we detest totalitarianism, we are greatly disturbed by proposals, such as this bill, to copy any of the methods which totalitarian nations use for keeping a tight control over the thoughts and expression of individuals, over their political activities when they do not meet the approval of officials, and over the exchange of views among individuals in publications and meetings.

I

My main objection to this bill is that I see very little evidence to support the recital that the world Communist movement presents "a clear and present danger * * * to the existence of free American institutions." Let me begin by reviewing the acts of Congress which now protect our Government and institutions from attacks through violence or other unlawful action.

First, a statute enacted in 1861 (U. S. Code, new title 18, sec. 2384) punishes conspiracy "to overthrow, put down, or to destroy by force the Government of the United States, * * * or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United

States * * *" This was considered adequate to protect the Government when the Confederate Army was within 100 miles of Washington. In 1867 it was supplemented by another statute punishing conspiracy to commit any offense against the Government with any overt act, no force being required (U. S. Code, new title 18, sec. 371). These two statutes kept us safe from any serious consequences of internal disaffection in time of peace for three quarters of a century. Without any sedition act, we came through the panic of 1873, the panic of 1893, the panic of 1907, and the great depression of 1929–33. The absence of any prosecutions against revolutionists under either of these laws demonstrates that the sky has been clear of forcible revolution for a good many years.

Still, in 1940 Congress wanted more than the old conspiracy statutes. So it created two new types of criminal offenses in the Alien Registration Act. To begin with, it made the Espionage Act of 1917 applicable in time of peace, so as to punish anybody who advocated insubordination, disloyalty, and so forth, in the Armed Forces (U. S. Code, new title 18, sec. 2387). This measure was urged as essential to protect the Army and Navy from Communist organizations. Yet the only reported case under it was the abortive prosecution of about 30 Fascists and anti-Semites in Washington in 1944. The fact that there is no reported case under this statute against a Communist proves one of two things. Either Communist activities to demoralize the Armed Forces never have amounted to much, in which event there seems to be no need for more legislation for the same purpose; or else the 1940 statute has been very successful in putting a stop to such Communist activities, and if so why do we have to have a new law to safeguard soldiers and sailors?

The other part of the 1940 statute, commonly distinguished as the Smith Act (new title 18, sec 2385), makes it a serious crime to advocate the overthrow of any government in the United States by force, or to be an organizer or a member of any group of persons which advocates such overthrow. This is the first peacetime Federal sedition law since the ill-fated Sedition Act of 1798. It goes very far toward reaching anybody who belongs to what the new bills define as a "Communist political organization." If there were really a clear and present danger in this country from world-wide communism, anybody would naturally expect that this Smith Act would have been invoked again and again during recent years. On the contrary we find just three prosecutions. The first was several year ago, *Dunne* v. *U. S.* (138 Fed. 2d 137 (1943)). Although there was a good deal of wild talk by the men who were convicted in this case, their organization amounted to little more than a small outlaw labor union and, being Trotskyites, they were about as far removed as possible from the Communist dictatorship of the Soviet Union, which is described in the pending bill as the fountainhead of danger to our own country. The second was the abortive Washington prosecution of Fascists, already mentioned. Surely, Stalin's influence over American citizens could not have created an overwhelming peril to our Nation when the Smith Act lay dormant for 8 years before any of Stalin's admirers were thought worth prosecuting.

At last, 11 leaders of the Communist Party of America were indicted. They were convicted last autumn in New York City. The Government's case at this trial enables us to get a pretty good idea whether these 11 men and their organization have put our country in deadly danger. There was certainly some obnoxious behavior by the defendants in the courtroom and the witnesses for the prosecution recounted some pretty objectionable talk at the various Communist meetings which they attended. Yet, was there anything in the Government's evidence to scare any American citizen of normal guts? I talked with scores of people of varying political and economic views while the Government witnesses were testifying. Only two or three of them even brought up the case in conversation. Nobody was the least bit scared. Nor did I see alarm expressed by a single editorial or a single letter to the editor of a newspaper. It was about the least exciting news of the day.

The low temperature of this trial was significantly indicated by the accounts of the Goverment's case in the New York Times. Out of 39 issues reporting the misdeeds of the most prominent members of the leading Communist organization, the trial was front-page news for a little less than half the time (only 19 issues). This is hardly the way the chief newspaper in the country behaves when the Nation is at death's door. Very possibly the conviction of these 11 men will be upheld on appeal, but has anybody lain awake at night a single minute from terror because of the testimony against them?

Consequently, I see no need for supplementing the drastic penalties of the Smith Act by another and much more sweeping sedition law.

Some have argued that Communist spies make this bill necessary. Yet the Criminal Code already contains comprehensive legislation against espionage (new title 18, secs. 791–797). I see not evidence that these present statutes are working so badly that an entirely different remedy like this bill is necessary. There is no reported appellate decision about a Communist spy since Gorin was arrested in December 1938 (312 U. S. 329), and I know of no trials connected with spying between 1939 and 1948. With such a long gap it looks as if the existing laws have been pretty effective as laws go. The recent trials of Hiss, Miss Coplon, and Gubitchev show that some spying has taken place but they also prove that the FBI is very much on the job. Hence there is no cause for alarm. The documents which got into the possession of Wittaker Chambers are 10 years old, and much better precautions against leakage now exists in Government offices. The documents disclosed by Miss Coplon were not of great importance to the Russians or anybody else. And although the existing statutes have not prevented all spying, there is no reason to suppose that this bill would do so either. Anybody who is wicked enough to be a spy and willing to brave the severe penalties of the espionage statutes will not shrink from violating a law which requires him to register as a Communist. If the present statutes against spying are thought to be defective, the proper remedy lies in amending those statutes so as to aim directly at spies, and not in roaming all over the lot against thousands of people, most of whom would never dream of being spies.

The postal and interstate commerce provisions of this bill (sec. 11) are unnecessary to prevent the transmission of really dangerous communications, because existing statutes make matter nonmailable for violating the Espionage Act or advocating treason, insurrection, forcible resistance to a law of the United States, arson, murder, or assassination (new title 18, secs. 1461, 1717) deny the second-class mailing privilege to such matter by Supreme Court interpretation (255 U. S. 407), and make imported books, etc., of this sort seizable (19 U. S. Code, sec. 1305). It would be easy to amend a present criminal statute regulating interstate commerce (new title 18, sec. 1462) to reach the same classes of matter if this be thought desirable.

Finally, in connection with the registration provisions in this bill, it is important that we now have two statutes requiring registration in particularly serious situations. Anybody who acts as the agent of a foreign government must register (except diplomats, consuls, etc.) ; and any organization "subject to foreign control" must register if it is engaged in political activity or if it aims to control, seize, or overthrow the Government of the United States by force (22 U. S. Code, secs. 233–233g; new title 18, sec. 2386). Anybody within these two statutes who fails to register before acting incurs severe criminal penalties. Now, if the Communist Party of America or any other group in this country really satisfied the definition of a "Communist political organization" (sec. 3 (3) in H. 7595), then there is no need of a new law to make it register. It can be compelled to do so any day under the existing statutes just mentioned. The fact that these two statutes have not been enforced against the Communist Party or its leaders indicates that all the talk in section 2 of the bill about American Communists creating "a clear and present danger" of a totalitarian dictatorship in the United States, is like the reports of Mark Twain's death—grossly exaggerated.

To sum up in two sentences this survey of the present United States Code:

If American Communists and fellow travelers are as dangerous as the supporters of this bill make out, then there is enough legislation already with teeth in it to take care of these people; so no new law is needed.

If, on the contrary, existing statutes are now violated by what these people are saying or doing, then they can't be very dangerous; so no new law is needed.

II

Let us now turn from the law to the facts. How many Communists are there in the United States? The United Press said 70,000 in 1947, out of a total population of 143,382,000 (World Almanac, 1949, pp. 544, 164) ; and Mr. J. Edgar Hoover recently gave a lower figure of 60,000 Communists. Thus Communists form one-twentieth of 1 percent of all the people in our country. The odds are 1,999 to 1 in favor of free institutions. Suppose a football stadium holding 40,000 people. The chances are that 20 of them would be Communists and 39,980 would not. Remember, too, that it is not a question of 20 dynamiters or 20 men with concealed weapons, for then they could be arrested at once under the ordinary criminal laws. Just 20 unarmed persons who have not violated any existing

Federal or State law or conspired to violate any existing Federal or State law or conspired to violate any existing law. But they have learned bad ideas about politics from foreigners and foreign books, they are thinking bad thoughts about these bad ideas, they are telling them to each other and to any outsiders who are willing to listen. And hence we are told that without this new sedition law we are helpless to prevent them from harming the other 99.95 percent of us, who have on our side only the city and State police, almost every newspaper and school teacher and professor and preacher, the Federal Bureau of Investigation, the Army, the Air Force, and the Navy, never forgetting the Marines.

Shades of Valley Forge and Iwo Jima! If we no longer want to be the land of the free, at least let us be the home of the brave.

I fully recognize that the Communist Party in Czechoslovakia was a danger to the freedom of Czechoslovakia, and the same is probably true of Italy and some other countries. It does not follow that the inclusion of less than one-twentieth of 1 percent of our population in a Communist Party here is a real danger to our institutions and our freedom under the very different conditions in this country. We have a very strong Government equipped with existing legislation and efficient Federal police. Our Government does not need any such novel bill as this in order to deal effectively with any actual conspiracy against its existence or any actual effort toward violent revolution. Where inside this country are the facts which justify the establishment of unheard of regulatory machinery, the expenditure of large sums of money in its operation, and the severe punishment of American citizens because somebody or other has not filled out a piece of paper?

It is now nearly 30 years since my work as a student of freedom of speech led me to pay considerable attention to the activities of Communists in this country. Although they are as detestable as ever, it is my considered opinion that they are far less dangerous today than they were in 1919–20, soon after the Russian revolution. During those early years (1919–20) that revolution was to many Americans the symbol of a better world. It was assumed to be a heaven on earth. To many idealists it at last appeared possible that men might build a fruitful society without having to seek their own profit. Today, however, few of those who dream of a city of God can ignore the ugly facts in Moscow. Radicals of my acquaintance who used to speak of Russia as a land of hope are now reduced to saying that it is no worse than any other country. Also social and economic conditions in this country have vastly improved since 1919. The reasons for revolutionary discontent which then existed have been greatly lessened by the legislation under Mr. Roosevelt, the high wages paid during the war and since, the realization that Americans of every sort fought and suffered side by side during the war. The spiritual health of the Nation is far better than in 1919. We have a much greater immunity to revolutionary radicalism.

III

Sometimes I wonder whether the supporters of measures like this bill have been worrying so much about Communists that they have forgotten what freedom-loving Americans are like. They would be the last people to fall easy victims to the ideology of a country where nobody can speak his own mind unless he agrees with the ruling class, where there is only the party convention and only one man to vote for at an election, where labor unions are state-run bureaus, where men can be grabbed out of their beds in the dead of night with no charge against them and be hidden away from their families for weeks, where hordes of people are moved from their old homes at the will of some official and ordered to live and work in some barren place 2,000 miles away. Although communism now has behind it a powerful nation, which was not the case 30 years ago, this makes military problems more serious but I believe it decreases whatever attraction it has had for American citizens. If there is one thing American history teaches, it is that most of our citizens intensely detest any possible foreign influences over our own political policies. The very fact that joining the Communist Party means constantly taking sides with a foreign government against our own Government is enough to keep most American radicals from having anything to do with that party. And then there are more material considerations, though by no means sordid. Think of the billions of dollars invested in life insurance and savings banks, the pride a man has in knowing that he is giving his children a better start in life than he had himself, the satisfaction of acquiring a home, a car, a motorboat, a little cottage on the beach. These bulwarks against communism are infinitely stronger than all the acquisitions and registrations and prosecutions that could ever be devised.

The only possibility of communistic control of this country, leaving out the chance of foreign conquest, would come, I believe, from the destruction of this confidence which the great mass of our citizens now have in their own future and that of their children's future. Imagine a prolonged period of enormous unemployment; the dollar buying what a dime buys now, and perhaps worth a nickel next week, who knows; ever-mounting taxes; the national revenue heavily mortgaged for decades by unwise commitments to groups of the aged at the expense of active men and women and their children; voters hating and despising the men they themselves have put in office because they had nobody better to choose from. That is when communism might grow by leaps and bounds, not because of what the 70,000 Communists say but because of what the hopeless facts say. Maggots live in rotten meat.

A friend of mine met a Communist in France. He was a man of considerable wealth, and my surprised friend asked him, "Then why on earth are you a Communist?" "Because any government is better than the kind we have been having for years and years." It is that sort of spirit which, if it should be widespread in this country, might lead us into communism.

It is up to you gentlemen in the House of Representatives and the Senate to make sure that no such blinding discouragement and financial demoralization shall ever threaten us. Better yet, it lies in your power to do many things which will constantly strengthen the confidence of citizens in the future and in their institutions. The cure for internal disaffection is not sedition laws, but normal Federal and State statutes to redress genuine grievances. The safeguard against communism and any other sort of disloyalty is to keep on working hard to make this a better country to live in.

IV

A further objection to the pending bill is that, while it purports to be necessary to preserve "free American institutions" it gravely impairs some of the most precious of those institutions—freedom of speech and press and assembly, which our ancestors put at the very head of our Bill of Rights. Without bothering you with an extensive discussion of the meaning of those freedoms, I merely pointed out what will be illustrated later by passages from several great exponents of the first amendment, that the American tradition of freedom of speech and press and assembly is that words as such shall not be punished or restricted, however objectionable the ideas they express. Peaceable language should be left alone by law, for the proper remedy for it is peaceable language on the other side. An especially strong claim to immunity is possessed by speeches and publications concerning political issues and candidates for office, because they are an essential part of the process of self-government. The only words which may properly be made unlawful are either (1) immediately injurious like libel and obscenity, or (2) closely connected with commonly recognized wrongful acts, e. g., an incitement to murder or to desert from the Armed Forces.

The present bill is not limited to the two exceptional situations just mentioned. Let me run through it rapidly to bring out this point.

Section 4 punishes any persons who agrees with another to perform "any act" which would "substantially contribute to the establishment in the United States of a totalitarian dictatorship." There is no requirement of the use of force or other unlawful methods at any time. The "act" may be wholly peaceable. It may be one of the commonest political activities, like nominating a candidate for office who is pledged to the specified policy.

Section 6 keeps a man within this country because of his association with men of specified political views, with no consideration of his own unfitness to travel abroad and with no refernce to any unlawful act. The denial of a passport may amount to a severe penalty on a person with bona fide reasons for going abroad.

All the registration provisions relating to a "Communist political organization" restrict normal political processes without regard to any unlawful act.

The registration provisions for "Communist-front organizations" have no relation to any unlawful act, but are imposed because of the expression and exchange of opinions.

The burdens in section 11 on use of the mails for letters as well as printed matter have no relation to any unlawful acts or to the character of the language sent by mail.

In case any of your committee should conclude that the trial of Communist leaders in New York last year shows sufficient unlawful acts to take them and the Communist Party of America outside the traditional protection for freedom

of speech, I would respectfully direct your attention to the fact that this bill is not limited in its application to that particular party. For example, if there had been such a law passed 2 years ago, the Progressive Party headed by a former Vice President of the United States might, for all we know, have been ruled to be a "Communist political organization," and the same thing may happen in 1952 if this bill be enacted. Moreover, the "Communist front" provisions obviously extend to other organizations than the Communist Party of America. It is impossible to justify the sweeping provisions of this bill by saying that it reaches only particular groups who don't deserve to have any freedoms anyway. You never know whom a sedition bill is going to hit until the authorities start shooting with it.

Put the provisions of this bill alongside the following statements by four exponents of the American tradition of freedom of speech and press and assembly, two of them great Democrats, two others great Republicans.

Thomas Jefferson said in his first inaugural in 1801, during the apprehensions caused by the French Revolution:

"If there be any among us who wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know indeed that some honest men have feared that a republican government cannot be strong; that this Government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth."

Justice Holmes said in a famous dissenting opinion in 1919 (250 U. S. 616) during the period of great excitement about Russians in this country who ardently supported the Russian Revolution:

"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that the truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country * * *. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law abridging the freedom of speech.'"

A few months later, Charles Evans Hughes objected to the exclusion from the New York Legislature of five duly elected Socialists, who were considerably less radical than Communists. That situation is closely parallel to the pending bill. Although it does not actually bar Communists from being candidates for elective office, the burdensome registration provisions and the possibility of prosecutions under section 4 will make it very difficult for any member of a "Communist political organization" and probably a "Communist-front organization" to participate in normal political processes. So Hughes' condemnation of any proposal to disenfranchise men merely for belonging to a group is highly relevant to the bill you are considering. He said (New York Times, January 10, 1920):

"If there was anything against these men as individuals, if they were deemed to be guilty of criminal offenses, they should have been charged accordingly. But I understand that the action is not directed against these five elected members as individuals but that the proceeding is virtually an attempt to indict a political party and to deny it representation in the legislature. This is not, in my judgment, American Government * * *.

"I understand that it is said that the Socialists constitute a combination to overthrow the Government. The answer is plain. If public officers or private citizens have any evidence that any individuals, or group of individuals, are plotting revolution and seeking by violent measures to change our Government, let the evidence be laid before the proper authorities and swift action be taken

for the protection of the community. Let every resource of inquiry, of pursuit, of prosecution be employed to ferret out and punish the guilty according to our laws. But I count it a most serious mistake to proceed, not against individuals charged with violation of law, but against masses of our citizens combined for political action, by denying them the only resource of peaceful government; that is, action by the ballot box and through duly elected representatives in legislative bodies."

Hughes as Chief Justice uttered principles equally relevant to the pending bill. In 1931, he said (283 U. S. 359):

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repuguant to the guaranty of liberty contained in the fourtenth amendment."

And in 1937 he released a man who had spoken at a meeting of the Communist Party, where no unlawful conduct was urged by anybody. He was convicted merely because the Communist Party was held to advocate criminal syndicalism and sabotage. Hughes said (299 U. S. 353):

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means."

Finally, Alfred E. Smith spoke out against the expulsion of the Socialist assemblymen in 1920 (see his Progressive Democracy, 273):

"Our faith in American democracy is confirmed not only by its results but by its methods and organs of free expression. They are the safeguards against revolution. To discard the methods of representative government leads to the misdeeds of the very extremists we denounce—and serves to increase the number of the enemies of orderly free government."

After you have read these extracts by four of the men who did most to make "free American institutions" what they are today, I respectfully request you to reread the pending bill and see how far it departs from the principles cherished and declared by Jefferson, Holmes, Hughes, and Al Smith.

V

My next objection is drawn from the past experience of the Nation. This is not the first time when fears of the infiltration of revolutionary radicalism from Europe has led earnest men to demand drastic laws against speeches and publications. A hundred and fifty years ago patriots terrified of the French Revolution got your predecessors to enact the Sedition Act of 1798. It is commonly regarded as one of the greatest follies in our history. Happily it expired in 2 years by its own terms. Again, after the First World War, Congress was repeatedly urged to pass a new peacetime sedition law. Revolutionary groups were much more vocal than now. Violent acts occurred, like a bomb exploded near the house of the Attorney General. Still, Congress refused to do anything, and nobody now regrets that refusal. The years that followed proved that the law which eminent men said was indispensable to save the country was not needed at all. The names of the men who supported the bills of 1798 and 1919–20 have long ago slipped into oblivion, but we remember Jefferson, Holmes, Hughes, and Al Smith for their courageous insistence that we must trust open discussion to bring us safely through.

That courage, we are now told by proponents of a bill like this, is out of date. The United States never had to face Stalin before. But in 1798–1801 it had to face the French Revolution and Napoleon. And in 1919–20 it had to face Lenin. His army was not so big as Stalin's, but he was a far abler master of revolutionary tactics. The lawyers who drafted the Sedition Act of 1798 and the judges who enforced that law were firmly convinced that they were stamping out a foreign menace fully as dangerous as the foreign menace which confronts us today. Indeed, they used much of the same arguments as those urged for these bills now, with France the villain instead of Russia, and Switzerland replacing Czechoslovakia as the victim to forecast the fate of our own Republic if we do not save ourselves by passing a sedition law.

Listen to the dire prophecies with which, in 1799, a committee of the House of Representatives urged the continuance of the Sedition Act for 2 years more (9 Annals of Congress, 299–2):

"If it be asserted * * * that our security arises from the form of our Constitution, let Switzerland, first divided and disarmed by perfidious seductions, now agonized by relentless power, illustrate the consequences of similar credulity * * *

"France appears to have an organized system of conduct toward foreign nations; to bring them within the sphere, and under the dominion of her influence and control. It has been unremittingly pursued under all the changes of her internal policy. Her means are in wonderful coincidence with her ends; among these, and not the least successful, is the direction and employment of the active and versatile talents of her citizens abroad as emissaries and spies."

As late as January 1801, after the Federalists had lost the Presidency, one of them was still trying to get the House to prolong the statute, by charging French agents with buying several American newspapers with foreign money for the purpose of spreading disaffection (10 Annals of Congress, 957–8).

In 1919–20 you can find the same kind of fears as today eloquently expressed in House and Senate hearings, by the Lusk committee reports in New York, and in the New York Assembly, where the outline of the case against the five Socialists described their party as "having the single purpose of destroying our institutions and Government and substituting the Russian-Soviet Government, * * * an antinational party whose allegiance is given to the Internationale and not to the United States." This corresponds almost word for word with passages in section 2 of the pending bill.

Everybody agrees now that the fears of subversive organizations in 1798–1801 and 1919–20 were much exaggerated. That ought to be a warning to your committee. Isn't there a pretty good chance that, a few years from now, all the scare words in section 2 of this bill will sound just as panic-stricken as the passages I have quoted from the Lusk committee and the opponents of Jefferson?

Every great war, especially a war accompanied by revolutions, is followed by a difficult settling-down period. The anxieties and strains of war do not die out the moment hostilities stop. People go on being worried because they have been worried so long, and all sorts of economic and social adjustments caused by the dislocations of war bring new reasons for anxiety. It took over 10 years for us to get back to normal after our own Civil War. The constant tension breaks out in all sorts of queer ways, and one frequent manifestation of it is fear of internal disaffection. The English went through a terrible period of this sort after the long Napoleonic wars: they enacted any number of suppressive statutes, and soldiers shot down workmen who were attending a peaceful meeting at Peterloo. We experienced the same kind of thing in a milder form after the First World War during the so-called Red Menace. In such times of disturbance and anxiety, sedition laws were demanded as indispensable, but soon the tension began to relax, the fears proved unwarranted, and the country went on safely with its traditional freedoms.

We are going through such a settling-down process today. It is particularly difficult for all sorts of causes—the magnitude of the devastation, the delay in the peace treaties, the diverse character of the victorious nations, the unprecedented formation of a world-wide permanent union, and so on. We have plenty of real worries, and it is quite natural that they should be reflected in some false worries as well. All the more reason for keeping our heads.

It is like waking up at 2 in the morning and trying to solve all your problems at once. A wise man tells himself that some of those problems won't amount to much in daylight. He faces the immediate tangible tasks squarely, and stops tearing himself to pieces over vague, remote, conspiratorial perils. Usually they vanish next morning. If not, they shrink into concrete problems which can be taken up when they actually arise as part of the ordinary course of life.

I have read a good many regrets that particular sedition laws were passed. Never, given the lapse of 2 or 3 years, have I known anybody to regret that a sedition law was rejected.

The principles which Jefferson used to allay apprehensions in his time are equally valid in our time. Meet unlawful action with action; proceed against real spies and real plotters as he prosecuted Aaron Burr and approved the dismissal of Genêt. Meet objectionable ideas from abroad by living up to our own ideas—give increased drawing power to our great traditions of democracy and freedom.

VI

My final point before I take up the bill in detail is very important. Its enactment would disastrously impair our influence over other freedom-loving peoples.

If we leave aside military considerations, the best way to combat the spread of communism in western Europe and elsewhere is to give increased drawing power to the great traditions of democracy and freedom. These war-torn countries want more than weapons, more than food and machinery. They are eager for ideals to strengthen the spirit and make life worth living. Communism, we are told, operates like a religion; it is presented as the vision of a better world. Yet Jefferson and Lincoln had a great vision. During the nineteenth century it possessed the appeal of a religion to bring millions to our shores. In order to hearten the discouraged peoples of the twentieth century, we must keep that vision bright—not, this time, to attract them to America but to enable them to rebuild their lives in their own homes, so that the freedom which Jefferson and Lincoln did so much to give us will be a reality in many parts of the world.

More than words is needed. Unless our acts show that we believe in our democratic ideals, we lessen the chance of winning wavering men to democracy.

In my experience with foreigners in the United Nations, I have been constantly impressed by the way our prevailing adherence to the ideals of our Bill of Rights helps to close up the ranks of freedom-loving countries in opposition to undesirable measures. On the other hand, I have seen how much harm is done whenever we conspicuously depart from our professed basic principles. It lays us open to damaging charges of hypocrisy and pretense, which are hard to meet. There is no doubt that such attacks based on concrete facts do impress men from many countries whose support we need, and sometimes they are thus pried apart from the United States delegation on critical votes.

Now, freedom of information is one of the big issues in the United Nations at the present time. A treaty of great value to facilitate the work of foreign correspondents, which was originally projected by our State Department, has been put in final form by the General Assembly. Over and above this, freedom of speech and press is an American ideal which means a very great deal to the citizens of countries where censorship and every sort of gross suppression have prevailed in recent years. So, the way we maintain freedom of speech and press or the way we depart from it is bound to have a tremendous effect, for good or bad, upon delegates from countries like Holland, Norway, India, and Australia.

Consequently, if we enact a new sedition law like this bill, it will do us great harm among our natural friends in the United Nations. They know well how much suppression is made possible by the vague definitions in this bill. We just can't defend such a sedition law against the bitter attacks of our opponents, and still less against the distrust of our friends. Our professions of love for open discussion will ring hollow in their ears. And matters will be much worse when enforcement starts, with numerous inquisitions by the Subversive Activities Control Board, mail opened, nonregistrants prosecuted, lists gone through with a fine-toothed comb, and all the rest of it. Frenchmen, Belgians, Dutchmen, Norwegians, Danes have had years of experience with that sort of thing under totalitarian occupations, and it leaves a stench in their nostrils.

The way for us to spread abroad freedom of speech is to live up to it ourselves. The rejection of this bill will be a telling demonstration that we are governed by the principles of Thomas Jefferson.

VII

Analysis of the actual operation of the bill

It is time to examine the bill in some detail and see how it is likely to work. The bill may conveniently be studied under five different aspects: (1) the purely criminal provisions in section 4; (2) the general registration machinery; (3) registration of a "Communist political organization"; (4) registration of a "Communist-front organization"; (5) practical considerations about various enforcement provisions.

1. *The purely criminal provisions of section 4.*—The bill is much more than a registration measure, although it is sometimes represented to be merely that. It imposes many serious penalties upon the expression of opinions and upon membership in organizations which are stigmatized because of their opinions. Notably, section 4 has no connection with the registration requirements. It punishes any sort of participation in the novel and very vague crime of establish-

ing a totalitarian dictatorship in the United States. Whatever this crime means, it goes far beyond the speech which is punishable under the Smith Act.

Nobody knows how unexpectedly a sedition law can be construed unless he has studied into such matters. The draftsman and the legislators have certain particular situations in mind, but its actual use may be against some kind of conduct which they never dreamed of. Thus a New York statute which was passed after the assassination of President McKinley to punish anarchists has never been used against an anarchist, but it was drastically enforced against Gitlow and other Communists, who are at the opposite pole of political thought from anarchists (234 N. Y. 159 (1922); 234 N. Y. 132, 539 (1922); 266 U. S. 652 (1925)). A still more striking illustration is an existing Federal statute, which looks absolutely clear. It punishes with imprisonment up to 5 years a willful "threat to take the life of the President * * *" (new title 18, sec. 871). What could be plainer? At once we think of the need of shutting up the man who writes the President that he will be shot unless a certain bill is vetoed. But that is not the way this statute has worked out. A man in Beaumont, Tex., got into a violent argument about Wilson's war policies and exclaimed "I wish Wilson was in hell, and if I had the power I would put him there." He was convicted under this law and the courts held his revolting language was punishable as a threat to kill the President—how could he be in hell unless he were dead? (Bulletins of Department of Justice on Interpretation of War States, No. 101; 250 Fed. 449.)

So, if this bill passes, you cannot tell what sort of people will ever be punished for agreeing to aid in establishing a totalitarian dictatorship, but you can be sure that they will be very different people from anybody that you have in mind in the spring of 1950.

I have already pointed out that these provisions do not involve any use of force or unlawful acts. It will be a crime for two men to agree that one of them will run for Congress on a platform which a particular jury considers to involve a totalitarian dictatorship.

Subsection (b) of section 4 relates to acts of disclosing secret information, something most people regard as wicked now. Hence this provision is entirely different from most of the bill. If we need any new law against such wrongful acts, it seems to belong in a separate amendment to the espionage statutes, and not in a sedition bill. Moreover, if a secret is worth classifying as such, why hide it only from Communists and let it out to Fascists, columnists, and ladies at large? This country contains many more blabbers than conspirators. Here as elsewhere in the bill, I find provisions which only an emergency can justify, and which consequently have no place in a permanent statute such as this is intended to be.

Whatever else your committee may decide to do with this bill, I hope that you will strike out section 4 at all events. It is a straight sedition law of the most reprehensible sort. We came through the months between the fall of France and Pearl Harbor without needing any such protection against the much more powerful totalitarian dictatorship of Hitler, and we certainly do not need any such extraordinary statute now.

2. *The general registration machinery.*—This is mainly described in sections 13–17 of the bill. We can expect that if the bill becomes law, the procedure will operate in three successive stages:

1. Some organizations may register voluntarily or may do so after receiving some sort of notice that a proceeding for registration is to be begun. Some individuals within section 8 may also register of their own accord. There will also probably be defaults by organizations and individuals in cases before the Subversive Activities Control Board. In all these situations the administration of the law will really begin and end in the office of the Attorney General.

2. Contested cases will be heard and decided by the Subversive Activities Control Board, to which I shall return in a moment.

3. Either the Government or an organization (or individual) required by the Board to register may under section 15 (a) get judicial review in the Court of Appeals in the District of Columbia and perhaps in the Supreme Court.

It is my well-considered opinion that by far the most important of these three stages is the second stage, before the Board. Except for purposes of passing on questions of constitutionality, judicial review may not play an important part for at least two reasons. In the first place, going to court is expensive and the financial resources of organizations under fire will often be small anyway; they will be further crippled by the denial of income-tax advantages under section 12, which is likely to scare off contributors as soon as proceedings start

against an organization, without waiting for the final order. A recent treasury ruling denying exemption for gifts to organizations which the Attorney General has listed as subversive is already demoralizing to the financial condition of such organizations. In the second place, all the evidence against an organization or on its behalf will be taken before the Board. The reviewing court has no power to receive any new evidence. Now, any lawyer knows the way in which testimony shapes up depends considerably upon the competence, experience, and fairness of the person or persons presiding at the trial. It is true that the court can send a case back for additional evidence and further findings, but all this will happen in the same Board. If its attitude is definitely hostile to an organization or an individual, he may well feel that it is not worth his time and his money to seek judicial review on an unsatisfactory record. At all events, whatever the frequency of resort to the courts, it is plain that the bill gives very important powers to the Subversive Activities Control Board.

Therefore the operation of this statute depends very largely on the three persons composing the Subversive Activities Control Board, set up by section 13 (a). Who are they, what will be their experience, are there any safeguards to induce them to behave like judges rather than law-enforcers and policy-makers, are they independent of executive control or congressional control, does the compensation attract men of unusual ability?

The bill states no qualifications except that the three members are to be appointed by the President and confirmed by the Senate. They get a salary of $12,500 each, serve for 3 years, and may be removed by the President for cause. Thus it depends pretty much on the President whether the Board consists of men fit to be judges and make competent and impartial decisions in a novel and very controversial field.

Now, we come to a disturbing provision. The three members of the Board "shall not engaged in any other business, vocation, or employment" (section 12 (d)). What sort of men will be willing to do nothing except examine the affairs of suspected subversive organizations, all day long, week in and week out for 3 years? Sifting the good from the bad requires historical and sociological training and insight plus judicial capacity of a high order, but there is none of the variety which makes a judge's work appealing. The danger is that nobody who is really fit for this task will touch it with a 10-foot pole. What you are likely to get is either political hacks attracted by one of the highest-paid jobs in Government service, or else persons fired by a zeal for red-hunting.

Tremendous powers over the lives of private citizens will be possessed by the three men on this Board. They can shape political action, blast reputations, deprive Government employees and workmen of their jobs with small hope of getting other employment. Even if organizations condemned by the Board get judicial review, they will not have much of a chance to reverse its decision. On the assumption (which seems to me doubtful) that this bill is constitutional, its definitions of a "Communist political organization" and a "Communist-front organization" are so wide, that it will be hard for judges to say that the Board was wrong in bringing an organization within those definitions. As usually happens in court review of administrative decisions, the judges may be reluctant to substitute their own judgment in place of the judgment of the officials, except in cases where the officials are plainly mistaken.

Only a terrible danger to the Nation could justify Congress in placing these enormous powers in the hands of three men who may not have the training and experience of judges and will not possess the life-tenure which the Constitution considers essential to assure the independence of men who make vital decisions. Once more I ask your committee—does such a terrible danger really exist?

3. *The registration of "Communist political organizations."*—Perhaps something can be said for requiring all political parties and all organizations which are somehow associated with politics to register, but this bill does nothing like that. It imposes on particluar political parties or organizations very serious burdens from which other political parties, etc., are wholly free. Section 7 of the bill requires those parties which the Board singles out to file the names and addresses of all members (perhaps 70,000 for the Communist Party), to repeat this full list every year, to keep accurate records of such names and addresses and of moneys received and expended, to file an annual financial statement. And every omitted name or address, every inaccuracy, may mean 2 years in prison for the party officers. Imagine what this would mean if it had to be done by the Republican Party or the Democratic Party!

But those are good parties, the supporters of the bill may say, and the bill hits only bad parties. Sifting bad parties from good parties is the job of the voters, by the American tradition, and not the job of Congress or Government officials. We have had confidence that most of the voters would recognize a bad party when they saw it and keep away from it. The fate of the Know-Nothing Party, which incited prejudice against recent immigrants, and the failure of the Communist Party to win any important office anywhere or even a single presidential elector, show that this confidence in the voters is amply justified.

Only once hitherto has Congress tried to take over the job of sifting out a bad political party. That was when the Federalists passed the Sedition Act of 1798, under which the owners and editors of the four chief Jeffersonian newspapers in the country were indicted, and several other editors and well-known Jeffersonian politicians were convicted and sent to prison. (See F. M. Anderson, The Enforcement of the Alien and Sedition Laws, annual report of American Historical Association (1912) 115.) This example proves that the definition of what is a bad political party may depend on the ideas of the particular people in power, who can shape the definition to cripple the adversaries they would like to get rid of.

The pending bill uses a different method to sift out a bad party. It is a method much more likely to succeed in breaking up an opposition party than the Sedition Act of 1798, which gave the vital decision to 12 jurymen, whereas this bill puts the control in the hands of three officials selected by the party in power. The basic idea in this method is to pick out characteristics of an objectionable sort which are possessed by some members of the party you want to smash, then brand the whole party with those objectionable characteristics, and consequently make it carry a heavy load in the political race against competing parties which run unburdened.

Now, this may seem very clever when it is used against parties with a communistic tinge, but it is a game two can play at. Once Congress passes this bill and gets people accustomed to the method of having officials sift out bad parties instead of letting the voters do it themselves, other laws can be drafted with new definitions of badness to hit some party which has nothing to do with communism. There is no logical limit to the possibility of thus proscribing an opposition party, for every party has some members with qualities capable of arousing intense and widespread detestation.

Let us imagine that the method of this bill had become familiar by the time the Republican Party was founded. Among its members were many prominent abolitionists, who had urged or even participated in violations of the fugitive-slaw law. So in 1858 the Democratic Congress passed a statute defining a "disloyal political party" as one which "is dominated or controlled by persons who advocate resistance to or disobedience of any law of the United States duly enacted." The statute compelled such a party to register, with all the consequent disabilities now contained in H. R. 7595. A "Disloyal Activities Control Board" appointed by President Buchanan and comprising two Democrats and one southern Whig, determined that the Republican Party was dominated by law-breaking abolitionists. This decision was affirmed by a majority of the Supreme Court which had lately refused to free Dred Scott. So the Republican Party had to register, list the names and addresses of all its members every year, mark all its mail "Disseminated by the Republican Party, a disloyal organization," and no Republican could hold any Federal office. Would Lincoln have been willing to run on the disloyal ticket? Would he have been elected?

What is the need of introducing such a method of political proscription among free American institutions in order to get rid of the Communist Party of America, which is so nearly dead already as a political party that it hasn't nominated a candidate of its own for President for at least two elections? As Senator Carter Glass remarked, "What's the use of wasting dynamite when insect powder will do?"

The reply may be made that, although the Communist Party amounts to nothing in elections, it still exists as an organization making policies and spreading propaganda of a bad sort, and hence this bill is necessary to break it up completely. How much good will that really do? Probably, if this bill be enacted, there will no longer be any organization called the Communist Party. My guess is that it will not register, but simply go out of existence within 30 days after the President signs this bill. See section 7 (c) (1). Then nobody can be punished for failure to register. The present 70,000 Communists will very likely join other political parties. They will be no less harmful than they

are now, because they will continue to have the same ideas and probably be more resentful than ever, on account of this new law. And there is no reason to expect that they will stop meeting together in some way or other. Anybody who has studied the history of Irish societies which were working to give Roman Catholics the vote, in the days of Daniel O'Connell, can tell pretty well what will happen. Every time a particular society was declared unlawful, it was promptly dissolved and its former members started a new society to do exactly the same thing. The same process was repeated under Parnell. See my Free Speech in the United States, 473–474.) So we can expect the formation of a large number of Shakespearean societies, Dante institutes, chess clubs, indoor-baseball associations, etc. Meanwhile you will no longer know whether there are 70,000 Communists at heart or 700,000. In short, if we are scared about the possibility of Communists under the bed, let us cling hard to the existing system which encourages most of them to get on the bed where we can see them.

Finally if you drive the present Communists into other political parties, they may be able to do much more damage than now. Candidates will be found in those lawful parties who will promise extreme measures in order to satisfy their new left-wing members. As for the former Communists who will not vote at all after the party vanishes, we shall be wise to remember that the prime cause of all dangerous political agitation is discontent and that outlawing Communists is likely to double their discontent. So long as they are a lawful political party, they can say, "This isn't such a bad country after all, for at least it does give us a chance to vote for the man we want to." But if you outlaw their party, then they can say, "This country won't let us earn a decent living and now it won't even let us vote. So let's try something else."

We ought not to discuss this bill as if it affected only one political party—the Communist Party of America. That is the chief target of the bill, but its enforcers do not have to stop there. How about following up the large number of former Communists who join the Progressive Party, which they supported at the 1948 election? A good many Democrats have excellent reasons for wanting to cripple the Progressive Party; it is common knowledge that Mr. Wallace drew many votes away from Mr. Truman last November. So there may be strong pressure in favor of proceeding against the Progressive Party under the Mundt-Nixon law before the 1952 election.

Suppose that the Progressive Party convention is held early in July 1952 and renominates Mr. Wallace. A few days later the party learns that it is charged with having become a "Communist political organization" or at least a "Communist-front organization," which seems reasonably possible under the provisions of sections 3 (4) and 14 (f) of the bill. Hence the Attorney General, relying on section 7 (c), notifies the Progressive Party to register within 30 days after the convention. If it does register, the Progressive Party and its members will have to run the whole campaign under the stigma of being a "Communist organization" with all the disadvantages imposed by this bill.

So the officers decide not to register the Progressive Party with the Attorney General, but to fight the issue through the Board and the courts until the final order is handed down under section 15 (b). Mr. Wallace and the officers of the party know that they will have to conduct the campaign with the opprobrium caused by the Government evidence in contemporaneous hearings before the Board, but at least, so they think, they will escape all the disabilities and penalties in this bill.

But are they right about escaping the penalties of fines and imprisonment under section 16 (a)? I don't believe so. The bill has a joker in it. Of course, if the final order is in favor of the Progressive Party, nobody can be punished. The trouble will come if they contest without registering, and then the final order goes against them. Let us suppose that the court decides early in December 1952, that the Progressive Party is a "Communist political organization" and became such at its presidential convention early in July. This decision reaches back to its initial failure to register, which the statute required to be done within 30 days after the convention. (You can't ignore section 7 (c) (1) and (2), in spite of clause (3) immediately afterward.) That means that the officers of the party had "the duty," by section 7 (h) to register early in August and also to file a statement listing the names and addresses of every member of the Progressive Party. Since a million people voted for Wallace in 1948, this is quite a job to do in 30 days. Well, they didn't do it, and so the officers are liable to the penalties provided by section 16 (a) (2): "each individual having a duty" under section 7 (h) "to register or to file any registration statement * * * on be-

half of such organization * * * shall, upon conviction of failure to so register," etc., "be punished for each such offense by a fine of not less than $2,000 * * * or imprisonment for not less than 2 years * * *, or by both." I do not see how the officers can get away from this punishment, if they lose the registration case.

Furthermore, 4 months or over 120 days must elapse between early December when they do actually register in accordance with the court's decision. The bill says (p. 36, lines 22–24) that "each day of failure to register * * * shall constitute a separate offense." Therefore any officer of the party who had a duty to register is liable to a fine of not less than $240,000 or imprisonment of not less than 240 years, or both.

It is my well-considered opinion that any good lawyer who was consulted by the officers of the Progressive Party in July would have to advise them that they ran a very serious risk of this enormous punishment unless they registered early in August. Human nature being what it is, most of these officers would probably resign at once. It would be pretty hard to get anybody to direct the campaign after the end of July. The Progressive Party would be broken up right away by fears of losing the registration contest. Even if it won that contest in court in December, it would be just as broken up in August.

Now, I am very far indeed from being an admirer of Mr. Wallace, but does your committee want to make it possible for the party in power to eliminate an opposing party in the way the Federalists tried to crush the Jeffersonians by the Sedition Act of 1798?

To sum up this matter of "Communist political organization." Probably the Communist Party of America does have some links with Moscow, and certainly some of its members engage in talk and organizational activities which are very repulsive to most Americans. But even if anything is gained by breaking up a party which comprises only one-twentieth of 1 percent of our population, the Smith Act of 1946 is amply sufficient. So it is wise, for the sake of getting rid of the Communist Party, to enact still another sedition law, which can easily be used to break up some other party to which many honest patriotic citizens belong and to warp and demoralize the normal processes of self-government? To pass this bill in order to hit Communists is like using a hammer to swat a wasp on baby's head.

4. *The registration of a Communist-front organization.*—Most of what has just been said is applicable to these organizations, except that only officers and not members have to be listed in registration statements and annual reports. Inasmuch as this part of the bill is likely to reach many more groups, whose purposes are often cultural as well as political and who are engaged in exchanging ideas rather than winning elections, the interference with the lives of private citizens is much more extensive than in the case of Communist political organizations.

Here again, there is something to be said for a general registration law requiring all groups, which attempt to influence public opinion to disclose the pertinent facts about themselves through systematic procedures. The harmfulness of nondisclosure is by no means confined to Communist-front organizations. For instance, virulent anti-Semitic circulars and pamphlets falsely and libelously accusing long lists of well-known decent citizens with being disloyal are often widely mailed by organizations with high-sounding names, which take good care not to mention their authors and the men who put up the money. A broad statute to break through this vicious anonymity of defamers of every sort is recommended in the 1947 Report of the President's Committee on Civil Rights. (To Secure These Rights, 51–52, 164.) On the other hand, my book on Government and Mass Communication (vol. II, 489–494) presents some serious doubts wheher such a statute will be a desirable remedy for vicious anonymity; it is likely to be enforced inefficiently and in a haphazard way, and to stifle more good views than bad views.

At all events, if Congress thinks a compulsory-disclosure law for propaganda is needed, then it is needed for all sides of political, racial, and religious controversies. Such a law should seek to force into broad daylight all the enemies of democracy and not just a particular portion of them as in this bill, leaving the rest to remain in the darkness they love "because their ways are evil."

Leaving the lopsidedness of this bill for later attention, let us see what this part of the bill actually does. It enables three Government officials to pick out certain groups and classify them as Communist-front organizations. They are then subjected to numerous burdensome obligations from which social and propagandist groups are normally free. They must register, file lists of officers, keep supervised records and accounts, file annual reports, etc., under very severe

penalties. Contributions will be reduced by their loss of income-tax deductions (sec. 12). Finally, they must label every publication and the outside envelopes of all mail as coming from a Communist organization. This novel stigma recalls the practice of medieval princes to require Jews to wear special marks on their coats.

All this virtually outlaws whatever organizations the three officials object to. They will probably die under these burdens. If they do continue, they will have lost most of their moderate members and be wholly in the hands of extremists who don't care. Thus they will be rendered more harmful than before.

Along with section 4, these Communist-front provisions are the most harmful parts of the bill and so must be discussed at some length. First, I should like to point out the great dangers of thus interfering by law with freedom of discussion through organizations. The bill proposes to twist out of all recognizable shape one of the leading traditions of American life, which is the possibility of freely forming associations for all sorts of purposes, religious, political, social, and economic.

If we look back over our national history, we see that many of the most significant political and social changes began with the efforts of some small informal group, which started as the object of considerable dislike on the part of the ordinary run of citizens. The abolition of slavery grew out of Garrison's Antislavery Society and similar associations. The nineteenth amendment is the culmination of the activities of a few unpopular women in the middle of the last century. The election of Senators by the people, the Federal income tax, and several other reforms largely originated with the Granges and the Populists. One can think of plenty of additional illustrations of the free and easy formation and operation of propagandist groups in American life. Sometitmes they have succeeded and sometimes they have failed, but the point is that American political, social, and economic institutions have developed to a very large extent through the interaction of numerous informal groups. The appearance of a group favoring one side of an issue often brought about a group of opponents, and the public profited from its opportunity to judge between their competing presentations of both sides of an important national problem. What I want to hammer home to you gentlemen is that freedom of speech under the first amendment has from the very beginning meant more than the liberty of an isolated individual to talk about his ideas or put them into print. From the very beginning, freedom of speech has involved the liberty of a number of individuals having a common purpose to associate themselves for the advocacy of that purpose. Thus freedom of speech and freedom of assembly fit into each other. They are all related to the possibility of petitioning Congress and the State legislatures for redress of grievances, and I am sure that everybody feels that the right of petition is only part of the wider freedom to submit the views of the individual or the group to the people at large for judgment.

There have been times when a particular type of groups has obtained such strength that it has become a matter for legal regulation. A conspicuous example of this is found in the labor unions, which were given legal recognition and the support of an administrative board by the Wagner Act and were later compelled by the Taft-Hartley Act to exercise their bargaining power under certain restrictions. Never before, however, has Congress undertaken to regulate opinion groups in their formative stages when they are far from having attained any practical power to dominate political or economic affairs.

It may be argued, however, that the so-called Communist-front organizations present an entirely new problem because they have objectionable purposes and include objectionable persons in their membership.

This brings me to my second point. It has always been true of a great many propagandist organizations that their purposes were denounced by numerous law-abiding citizens and that their membership included some extremists whose actions or ideas were open to serious adverse criticism. The books are full of denunciations by prominent citizens of abolitionists, women suffragists, labor unions, Populists, etc., which would more than match anything which has been written about the Joint Anti-Fascist Refugee Committee or the National Lawyers Guild or the National Council of American-Soviet Friendship or any of the other contemporary organizations listed as subversive by your committee and the California legislative committee. The situation as to membership is much the same now as it has always been. Propagandist organizations are not likely to be made up of men and women with conventional ideas. Such men and women are satisfied with society as it is. They have their own organizations like the Rotary clubs. The very nature of a propagandist organization is that

it wants to change something, and the ordinary run of people don't want change. Obviously, then, the propagandist organization is likely to be made up of the kind of people who do want change. Such people vary a good deal.

The core of the propagandist organization often consists of those whom Woodrow Wilson described as "forward-looking men and women," who disagree with the complacency of the ordinary run of citizens about some issue but still are fairly moderate in the changes they desire and so do not seriously offend their neighbors. Yet these are rarely the only members of a propagandist organization. In addition, it is likely to include what Theodore Roosevelt called "the lunatic fringe." The organization opposed to slavery had members of urged violations of law, such as rescuing fugitive slaves and transporting them to Canada on the Underground Railway. Some of them even favored or participated in the attempt of John Brown to start a slave-rising in Virginia. Some groups of women suffragists had members who strongly sympathized with the law-breaking activities of the English militant women and would have imitated them in this country if given the opportunity. Time and again the whole labor movement has been denounced as lawless because some unionists undoubtedly engaged in violence against their employers and nonunion workers. Some prohibitionists smashed saloons like Carrie Nation. Examples could be multiplied, but enough has been said to make it absolutely plain that there is nothing new on the adherence of extremists to organizations with desirable or at least legitimate purposes.

Hence we should not be surprised or frightened if it be true that some contemporary organizations for upholding the rights of minorities attract some members who are more in sympathy with communism than the rank and file of the organization like. It is equally possible that organizations for upholding free speech or a fair trial or other fundamental constitutional rights may attract extremists whose interest is not in constitutional rights but in getting a Communist off. In short, it is inevitable that the membership of organizations formed to bring about change should include some persons who want a great deal of change.

The supporters of this bill assume that the moderate members of an organization always have a solemn obligation to oust the extremists or else resign themselves. But this is by no means plain. Throughout the history of this country, the propagandist organizations which I have been describing were engaged in a hard fight against determined opponents. Their chances of winning this fight would have been clearly weakened if they had also waged an internal war with their own extremists or if they had got out and stopped supporting the cherished purpose of the organization. The practical question must have arisen hundreds of times: Was it better to put up with the extremists and continue the fight for an important cause, or disrupt the organization and probably kill the cause?

Now, I ask you gentlemen to consider what would have happened in the history of our country if the policy of this bill had been embodied in law during the nineteenth century. Of course, the tests for outlawing an organization would have been different from those laid down by this bill. Those tests would have been aimed at the kind of organization whose purpose was hated by the authorities of the particular period. Yet the general principle would have been exactly the same. The idea is to condemn an organization because of the objectionable ideas or conduct of its extremists and thus make it difficult for the moderates in the organization to accomplish their basic purpose.

For example, suppose that the standards of permissible membership in antislavery societies had been fixed by a board chosen by slave-owners and the owners of northern cotton mills. What an easy victory for these friends of slavery if they could have thus driven most abolitionist organizations out of existence or compelled them to operate under degrading labels. Again, suppose that the associations of employers and their friends in Congress had been able to set up a board to outlaw a trade union or federation of trade unions which was affiliated with men devoted to industrial violence.

When the membership and policies of an opinion-forming organization can be judged and controlled by outsiders with governmental power, all sorts of opportunities for the suppression of legitimate ideas arise. The officials, being outsiders, may be rather unsympathetic with the legitimate purposes of the organization. There is a tremendous temptation to opponents of these legitimate purposes to influence the selection and the behavior of the controlling officials. The presence of extremists can easily be made an excuse for outlawing an organization when the real reason for getting rid of it is not fear of the extremists but hatred of the legitimate purposes. The organization is suppressed, not because it might promote a revolution, but because it might win elections and produce legislation.

There are many important public questions to be settled in this country today, on which much can be said on both sides. In order to attain a wise solution of these questions, we need to preserve the unimpeded flow of discussion. Examples of such questions are these: Should we (*a*) oppose the totalitarian regime in Spain; or (*b*) resume normal diplomatic and commercial relations with Spain? Should we (*a*) give some measure of legal recognition to the present government of China; or (*b*) continue to supply billions of dollars to Chiang Kai-shek? Should we (*a*) do our best, in spite of tremendous handicaps, to cultivate friendship with the Russian people and explore every possible opportunity for peaceful adjustment of differences; or (*b*) assume the inevitability of a devastating war? Should we (*a*) decrease financial and military aid to western Europe; or (*b*) continue or increase such aid? Should we (*a*) refuse to arm western Germans for fear of a revival of the Nazis; or (*b*) arm them as a bulwark against the Soviet Union? These are vital questions, on which honest and reasonable men differ. They cannot be wisely decided unless individuals and opinion-forming organizations on one side are left as free to present their views as are those on the other side.

What is significant for the purposes of this bill is that in every one of these questions an organization which takes the (*b*) side cannot possibly be touched while any organization which takes the (*a*) side can conceivably be outlawed. Although there are plenty of honest reasons why many patriotic American citizens stand for the (*a*) side, it happens in every case that this side coincides with the views of the Soviet Union and its supporters, whose reasons are quite different. Now, one of the factors which the Subversive Activities Control Board can take into consideration in determining whether an organization is "Communist-front" is, by section 14 (b) (4), "the extent to which the positions taken * * * by it * * * on matters of policy do not deviate from those of any * * * Communist foreign government * * *." Thus the bill loads the dice against organizations which condemn Spanish totalitarianism or the wastefulness of Chiang Kai-shek, which urge all possible steps to avoid an atomic war, etc. Not only does this bill leave organizations on the (*b*) side untouched, no matter if they include Fascists, anti-Semites, and advocates of religious and racial hatred, but also the bill greatly aids those on the (*b*) side by silencing a large number on their most vigorous opponents. Insofar as there are errors on the (*b*) side, you will be increasing public danger enormously by making it very difficult for those errors to be combated by reason. It seems to me a frightful mistake to create such a warping of public opinion at the very time the Nation needs, more than ever before, to stand firmly by the principles of Thomas Jefferson.

Actual experience amply justifies the expectation that the vague characterization of "Communist-front organizations" in section 3 (4) and section 14 (b) of this bill will be used to outlaw or suppress many organizations which serve very desirable purposes, even if they do include some leftist people among their supporters. Remember always that everything depends on the three men who make up the Subversive Activities Control Board. We can guess what sort of groups will be classified as "Communist-front" from the list of subversive organizations made by Attorney General Clark (New York Times, December 5, 1947), by your committee in past years, and by legislative committees in California (see, for example, Third Report, California Senate Investigating Committee on Education (1948) page 47). The lop-sided character of these determinations is demonstrated by the California list, which includes organizations opposing totalitarianism in Spain but none of those upholding it, many organizations favoring peace but none of those urging a devastating war, several organizations on behalf of Negroes but none of those upholding white supremacy. Its bias on purely domestic issues is proved by its including committees for freeing Tom Mooney, who was freed by the Governor of California; a committee to free Earl Browder, who was freed by the President of the United States; a committee for the defense of political prisoners, who are guaranteed "the assistance of counsel" by the sixth amendment to our Constitution; the Committee for the Reelection of Congressman Marcantonio, who was as much entitled to have active supporters as any other Congressman; and a committee to abolish the poll tax, which is surely a subject for legitimate political activity.

The reasoning by which many of these and other organizations are condemned consists of heaping one dubious inference on another dubious inference. An individual, A, is condemned because he belongs to X organization. Then the Y organization is condemned because it includes A. Then B is condemned because he belongs to the same organization as A. That brings down the Z organization, to which B also belongs. Since C, a fellow member of B in Z, is also a

member of the X organization, that proves that X is subversive and we are right back where we started with no real evidence at any stage of the argument. When you discover that A and B are men like Prof. Charles A. Beard and Senator Frank P. Graham of North Carolina, the absurdity of this whole process ought to be manifest to any man of common sense. Nowhere is there any indication of Beard's position as one of our greatest recent historians or of Senator Graham's eminence as an educator and a citizen. Only the so-called subversive organizations to which such men belong are listed, without any indication of the eminent professional associations which have honored them. Unfortunately, this line of reasoning is by no means limited to the California legislative committees. For instance, you can find plenty of it in recent statements by Senator McCarthy.

The ease with which a desirable organization can be condemned as communistic on the basis of very thin evidence is shown by Prof. Walter Gellhorn of Columbia in an article on the wholly unfounded redlisting of the Southern Conference for Human Welfare by your committee when it had another chairman and different members (60 Harvard Law Review 1193, October 1947). Anything can happen when people get started on this business of outlawing groups, not for any crimes committed by either the group or any of its members but for having some vaguely bad ideas or some vaguely bad members. Judge Dorothy Kenyon and Ambassador Philip Jessup are denounced to a Senate committee for belonging to various "subversive organizations" such as the Institute of Pacific Relations. When it is pointed out that this institute included many persons of the highest reputation, the reply is made that any organization can attract some good members. Yet, the attackers insist on judging both the institute and Mr. Jessup by the supposed bad members and not by the admittedly good members. The whole business is based on the maxim "Give a dog a bad name and hang him."

There is no reason that I can see for expecting the Subversive Activities Control Board to be more discriminating than a United States Senator or than the California legislative committee, or than your own committee in past years. The enactment of this bill will create a tremendous risk of outlawing a considerable number of groups of law-abiding people with inquiring minds, engaged in furthering some end which they believe to be in the very best interests of the United States. And, on the other hand, this law will encourage those who hate the patriotic purposes of such groups to do all they can to suppress them by influencing the selection of the three officials on the Control Board and by bringing pressure of every sort upon those officials. Instead of an orderly and enlightened search for the truth and wise policy, public opinion will be formed by coercion and intrigue. This bill asks us to establish government by misrepresentation.

5. *The practical considerations about various enforcement provisions.*—The various penalties provided by this bill for organizations which are registered or ought to register are very severe and will interfere greatly with the lives and liberties of American citizens who have committed no acts of force or violence and most of whom have not been proved to be dangerous individuals. Always remember that, if real criminality does exist, it can be reached under present statutes, so that this bill is unnecessary to deal with anything which is now unlawful.

The first penalty is fine or imprisonment, with the oppressive cumulative provisions already mentioned. In addition to what has been said, it should be noted that under section 8 an individual who has done nothing in the way of wrongful conduct or wicked words except that he is adjudged to be a member of a "Communist political organization," without having his name listed, will be fined $2,000 or imprisoned for 2 years for every day he neglects to register. He will be punished worse than any counterfeiter, not because he is bad but because of the activities of other people. This conception of guilt by association is abhorrent in a free country. (See the article by John Lord O'Brian in 61 Harvard Law Review 592, April 1948; and my book on Free Speech in the United States, pp. 472–484.)

The second penalty is exclusion from Federal employment, under section 5 (a) (2), of any member of a "Communist political organization." This is not just a question of not employing Communists in Government jobs. The bill may (as already pointed out) bar any supporters of Henry Wallace. This prohibition includes teaching in the Washington public schools. Furthermore, prospective employees who are open to any possible suspicion may easily be kept out of such teaching and other Government work without any determination by

the Subversive Activities Control Board that they really are members of a proscribed organization. This will happen because section 5 (b) punishes any official who knowingly employs a member of such an organization. Consequently, if the official in charge of employment has any doubts, he will turn the suspected applicant away in order to save his own skin. He will not want to run any chances of going to prison himself.

In view of the President's loyalty order, it is hard to see the slightest need for this fresh combing-over of Government employees. The completion of the loyalty check resulted in the discharge of one three-hundredth of 1 percent of Federal employees. Only one-tenth of 1 percent resigned while under suspicion, many of them probably because they preferred private jobs where they were treated like honest men. Not one among the millions of employees subjected to the loyalty test has been indicted for a crime (New York, May 21, 1949, p. 37). The loyalty review boards are composed of men with experience in important work, who are more likely to be competent and impartial than the Board set up by this bill.

The third penalty is the denial of a passport under section 6 to members of a "Communist political organization." We are constantly blaming the Russians for not allowing anybody whom their Government dislikes to travel abroad, and yet we are now proposing to do much the same thing ourselves. Of course, the existing law allows anybody who is personally dangerous to be refused a passport. Why isn't that enough to keep the country safe?

The fourth penalty is the exclusion from mails and express under section 11 of publications relating to the affairs of a "Communist political organization" or of the numerous bodies which are likely to be classed as "Communist-front." This includes letters as well as printed matter, by section 3 (6), so long as the letter is intended to be read by more than one person. How can any enforcement official tell that the contents of a sealed letter violate this bill without opening the letter? Therefore, section 11 involves breaking into private correspondence, one of the most odius forms of petty tyranny.

Taking an over-all view, I predict that many other kinds of prying besides opening letters will be rampant if this bill is to be effectively enforced. The hearings before the Subversive Activities Control Board cannot help being inquisitions into men's "dangerous thoughts." Conversations will be reported by participants, so that men will begin wondering whether it is safe to say anything to supposed friends. People will eavesdrop on their neighbors. Secret police will be multiplied to catch all these new crimes. Spies will be introduced undercover into suspected organizations in the hope of collecting evidence. This has already been going on extensively in the Communist Party, and the Government evidence in the recent trial in New York City reveals that at least three undercover agents of the United States were actually engaged in persuading men to become Communists and take part in what their official employers considered to be a criminal conspiracy against the United States (New York Times, April 13, 1949, p. 22, col. 2; May 3, p. 3, col. 7; May 18, p. 19, cols. 4–5). It is only a step to agents provocateurs, spies who incite organizations to commit unlawful acts for the sake of getting damaging evidence against those organizations—the sort of thing which the La Follette committee showed to be going on the inside labor unions. (See what Oliver, a spy planted in English radical groups after Waterloo, used to do. Hammond, The Skilled Labourer, 341–376.) You get a man changing so often from revolutionist to spy and back again that he does not know himself which he is. It is like Russia under the Czars. (See Joseph Conrad, Through Western Eyes.) It is bad enough to have numerous undercover spies inside the Communist Party. The passage of this bill will spread them into a whole new flock of suspected organizations, many of them much more legitimate than that party. No doubt, all sorts of queer devices are sometimes necessary to catch really dangerous criminals, like gangsters and violent revolutionists, but the enforcement methods which this bill requires are a terribly high price to pay for tracking down nothing except objectionable ideas.

In 1920 Gov. Alfred E. Smith of New York vetoed a bill which authorized the Attorney General to conduct investigations of violations of the State sedition law. He said (Progressive Democracy, p. 275):

"There is no just cause for providing any different method for enforcing the criminal anarchy statute from that employed in enforcing the other penal laws of the State—through the agencies of the grand jury, the magistrate, and the district attorneys of the respective counties of the State. The traditional abhorrence of a free people of all kinds of spies and secret police is valid and justified and calls for the disapproval of this measure."

In this statement, I have not gone into questions of constitutionality. The main question is the wisdom of this bill and not its validity. Even if it be constitutional, it is most unwise and, therefore, it ought not to be passed.

Still, you may care to have my opinion on the constitutional aspects of the bill. An opinion that a statute is unconstitutional is, in one sense, a prediction that five Justices of the Supreme Court will declare it invalid. Any prudent man ought to be very cautious about making such a prediction. I can, however, say with assurance that the Court must overthrow this law if it continues, as in recent years, to adhere to the principles laid down by Mr. Justice Holmes in *Abrams* v. *United States* (p. 14, above), and by Chief Justice Hughes in *Stromberg v. California* and *De Jonge* v. *Oregon* (both quoted on p. 15.) The vague definitions of wrongful speech and group activities in this bill and the way it loads the dice in the discussion of important public issues constitute interferences with freedom of speech and assembly far more insidious than those which have been repeatedly blocked by the Supreme Court. The declaration of clear and present danger in section 2 (11) would be brushed aside in a moment as a gross distortion of the facts by either of the two great judges just named or by Chief Justice Stone or Mr. Justice Murphy.

Yet, the task of you gentlemen is greater than a mere prediction of what the Court will do. As Mr. Justice Holmes notably said, "Congress is the ultimate guardian of the liberties of the people" as much as the courts (194 U. S. at 270). To you primarily was the first amendment addressed:

"Congress shall pass no law * * *abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble; and to petition the Government for a redress of grievances."

Restrictions, like libel laws which were customary in 1791, may be regarded as not "abridging" these great freedoms, and other restrictions like the Espionage Act have been similarly sanctioned as necessary to carry out the express affirmative powers of Congress over war, the postal services, and so on. But, if there was one thing which the framers of the first amendment hated and meant to get rid of, it was peacetime sedition laws. The Sedition Act of 1798 betrayed that hope. True, no court declared it unconstitutional, but you, the Members of Congress, did so emphatically when you repaid the fines of the men convicted under that act (see 250 U. S. at 630). Do not you betray that hope again, by establishing a control over opinions and assembly and petition far more rigid and poisonous than anything ever dreamed of by the minions of George III.

IX

And now, in conclusion, I return to the wisdom of this bill. We are told that these novel penalties, this novel machinery, this unheard-of prying into the exchange of opinions, are "necessary * * * to preserve the sovereignty of the United States as an independent Nation * * *." Do you really believe that is so? Will the country really be ruined if you drop this bill and rely on all the present statutes I have described and on the patriotism and good sense of the American people and their ability to reach sound conclusions through untrammelled discussion? It is not enough to justify this tight supervision of private lives that Communists are pestiferous people or indulge in big talk about taking over our Government. The question is whether they are within a million miles of doing so. Jefferson said in 1801: "I believe this the strongest Government on earth." Because I confidently share his belief, I hope very much that your committee will reject this unheard-of bill. We are engaged in a conflict of ideas, between our own great principles of freedom and the detestable dogmas of totalitarianism. The best way, the only sure way to prevail in that contest is to stand firmly by those principles of freedom and not, as this bill does, water freedom down by borrowing some of the most hateful practices of the totalitarians. To do that would be to surrender early in the contest much of what we hold most dear.

STATEMENT OF WILLIAM GREEN, PRESIDENT, AMERICAN FEDERATION OF LABOR

AMERICAN FEDERATION OF LABOR,
Washington, D. C., March 27, 1950.

Hon. JOHN S. WOOD,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: When I received the letter you sent me a short time ago, I called upon our legal department to make an analysis of the bill you referred to—H. R. 7595. My request was complied with. A report of the analysis

of said bill was sent me by the representatives of our legal department, and I enclose herewith copy of said report.

After giving careful consideration to the bill and to the analysis made by our legal department, I concluded that there did not seem to be any good reason why such a bill as H. R. 7595 should be passed by the Congress of the United States. We can deal with the Communist question which H. R. 7595 seeks to deal with in a satisfactory way without resorting to the enactment of legislation such as is included in H. R. 7595.

Very sincerely yours,

WM. GREEN,
President, American Federation of Labor.

Attached is a section-by-section analysis of a bill introduced by Congressman Nixon which we understand is identical to S. 2311, recently favorably reported by the Senate Judiciary Committee by a vote of 12 to 1.

H. R. 7595 is similar in all substantial respects to S. 1194 and S. 1196, presented, respectively, by Senators Mundt and Ferguson at the 1949 session of Congress and concerning which an analysis has previously been given. Prior to the analysis of S. 1194 and S. 1196, an analysis of the original Mundt bill, H. R. 5852, presented in 1948, had been made. A representative of the American Federation of Labor appeared and testified in opposition to these previous bills, and we assume his statement and these analyses are available. The present bill (H. R. 7595), while it does correspond to the 1949 Mundt bill in many respects, has been amended to meet some—but not all—of the objections advanced by the American Federation of Labor. The principal differences between the present bill and the 1949 Mundt bill are as follows:

1. That portion of section 4 relating to conspiracy has been amended by substituting in the present bill the phrase "contribute to the establishment of a dictatorship" in place of the phrase, "facilitate or aid in the establishment of a dictatorship." This serves to considerably narrow the scope of the prohibition and limit its application. However, it is our view, as expressed to you in previous analysis, that there is inherent in this section danger to labor organizations.

Under the previous bill analyzed, the Attorney General, upon receiving a registration statement from a Communist organization, was required to notify any individual named therein as an officer or a member of such listing and the Attorney General was prohibited from making the individual's name public until 30 days after notification to him of his listing as an officer and member so that he could have an opportunity to contest this listing before publication. The present bill extends this period of 30 days to 60 days.

The present bill establishes a "Subversive Activities Control Board" instead of a "Subversive Activities Commission" as was provided for under the previous bill, and the composition of the Board is considerably changed. Under the previous bill the Commission was composed of three members designated by the President from the Department of State, Department of Commerce, and the National Military Establishment, who serve without additional compensation. Under the new bill the Board consists of three members appointed by the President by and with the consent of the Senate. These members are prohibited from engaging in any other employment or business and shall be paid a salary of $12,500 a year. Thus, there is assured a much greater degree of impartiality and freedom from control by superior governmental officers.

Under the present bill, individuals or organizations appearing before the Board are entitled to counsel and it is required that a stenographic record of the proceedings be kept. These safeguards were not present in the bill previously considered.

Some of the factors to be considered by the Board under the present bill in determining whether an organization is a Communist-front organization have been more definitely worded than was the case under the previous bill. This greater explicitness in language does form some greater measure of protection. However, it must be pointed out that most of the factors to be considered by the Board, under the present bill, in determining whether organizations are communistic are word-for-word those contained in the bill previously considered, and these factors were quite strongly criticized by representatives of the American Federation of Labor at the time the previous bill was being considered.

As heretofore stated, with the exception of the changes noted, the present bill appears to be, in general, identical to the bill previously analyzed by us.

Except for these changes the objections heretofore made to this previous bill have not, in our opinion, been overcome.

Section-by-Section Analysis of H. R. 7595

SECTION 1

The act is given the short title of "Subversive Activities Control Act, 1950."

SECTION 2

Section 2 deals with the necessity for this legislation. It contains 11 subsections. This action states that there is a world-wide revolutionary political movement designed to establish a Communist totalitarian dictatorship in the world through a single world-wide political organization; that the establishment of a totalitarian dictatorship results in the destruction of fundamental freedoms that characterize a representative form of government; that a totalitarian dictatorship is characterized by a single political party, organized on a dictatorial basis, with an identity so close to the government itself as to be indistinguishable from it; that control of the world Communist movement is vested in a Communist dictatorship of a foreign country; that in exercising this control this dictatorship utilizes political organizations in various countries, and these organizations are mere parts or segments of a single world-wide Communist organization and are subject to that organization's direction and control; that such political organizations seek to carry out the objectives of the world-wide Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships subservient to the most powerful existing totalitarian dictatorship; that the Communist organizations in various countries are organized on a secret conspiratorial basis and operate substantially through organizations commonly known as Communist fronts; that due to the nature and scope of the world Communist movement, travel of its agents and representatives from country to country in furtherance of its objectives is essential; that individuals in the United States or in foreign countries who knowingly and willfully participate in the world Communist movement repudiate their allegiance to the United States or such foreign country, as the case may be, and transfer it to the foreign country in which is vested the direction and control of the world Communist movement; that the most powerful existing Communist dictatorship has already caused the establishment of ruthless Communist totalitarian dictatorships in numerous foreign countries and threatens to establish similar dictatorships in still other countries; and that the recent success of Communist methods in other countries and the nature and scope of this movement presents a clear and present danger to the security of the United States and requires Congress to enact legislation recognizing the existence of this world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

SECTION 3

This section deals with definitions. The terms "person" and "organization" are very broadly defined and include, among other things, "associations" and any "group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

A "Communist political organization" is defined as "any organization in the United States having some * * * of the ordinary and usual characteristics of a political party which (A) is substantially dominated and controlled by the foreign government or foreign governmental or political organization controlling the world Communist movement * * *, and (B) operates primarily to advance the objectives of such world Communist movement * * *."

The term "Communist-front organization" means "any organization in the United States (other than a Communist political organization, and other than a lawfully organized political party which is not a Communist political organization) which (A) is under the control of a Communist political organization, or (B) is primarily operated for the purpose of giving aid and support to a Communist political organization, a Communist foreign government, or the world Communist movement * * *."

The term "Communist organization" means a "Communist political organization or a Communist-front organization."

SECTION 4

This section makes it unlawful for "any person" knowingly to conspire with any other person to perform any act "which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization or foreign individual."

The term "totalitarian dictatorship" is defined as a form of government characterized by the existence of a single political party with an identity indistinguishable, for all practical purposes, from that of the government itself and the forcible suppression of all opposition to such party. (It is here to be noted that this section, at this point, embraces "any person," and that "totalitarian dictatorship" embraces not only Communist dictatorship but all forms of totalitarian dictatorship controlled or exercised by any foreign government, organization, or individual.)

Section 4 also makes it unlawful for any Federal officer or employee to communicate any information, classified by the President or by the head of any governmental agency with the approval of the President, as affecting the security of the United States, to any person whom such officer or employee knows or has reason to believe to be an agent of any foreign government or officer or member of any Communist organization, with knowledge or reason to believe that such information has been so classified, unless such officer or employee shall have been specially authorized by the head of such governmental agency to make such disclosure.

This section finally makes it unlawful for any agent of a foreign government or any officer or member of a Communist organization knowingly to receive or attempt to receive from a Federal officer or employee such classified information, unless special authorization for such communication has first been obtained from the head of the governmental agency having custody over such information.

The penalty provided for a violation of section 4 is a $5,000 fine or 10 years imprisonment, or both. In addition, a person convicted loses his right to hold public office. The statute of limitations applying to an offense under section 4 is fixed at 10 years. Under subsection (f) it is expressly stated that the holding of office or membership in any Communist organization by any person shall not constitute a violation of section 4.

SECTION 5

Section 5 deals with the employment of members of Communist political organizations. Section 5 (a) provides that, when an organization is registered or there is in effect a final order of the Subversive Activities Control Board requiring an organization to register as a Communist political organization, it shall be unlawful for any member of such organization, with knowledge that such order has become final. (1) in seeking or accepting any Federal office or employment to conceal his membership, or (2) to hold any nonelective Federal office or employment.

Section 5 (b) provides that when an organization is so registered or is so required to register, it shall be unlawful for any Federal officer or employee to appoint or employ any individual as a Federal officer or employee, knowing that such individual is a member of such an organization.

SECTION 6

Section 6 (a) provides that, when such an organization is so registered or is required to so register, it shall be unlawful for any member, with knowledge that such order has become final, (1) to apply for a United States passport or its renewal, or (2) to use or attempt to use such passport.

Section 6 (b) provides that, when an organization is so registered or is so required to register, it shall be unlawful for any Federal officer or employee to issue a passport to or renew the passport of any individual, knowing or having reason to believe that such individual is a member of such organization.

SECTION 7

Section 7 provides that each Communist political organization and each Communist-front organization (including any organization required by a final order of the Board to register as either) shall register with the Attorney General on a

form prescribed by him. Such organization in existence on the date of the enactment of the act shall register within 30 days after the enactment date. Such organizations coming into existence after such enactment date shall register within 30 days after their creation. An organization required to register by final order of the Subversive Activities Control Board shall do so within 30 days after such order becomes final.

The registration shall be accompanied by a registration statement prescribed by the Attorney General, disclosing the name of the organization and the address of its principal office, the name and last known address of each individual who then is or within 12 months preceding that time was an officer of the organization, with the office designated and a brief statement of the duties of each individual as such officer, an accounting of all moneys received and expended (including sources from which received and purposes for which expended) by the organization for the period of 12 months next preceding the filing of the statement. In the case of a Communist political organization, the name and last known address of each individual who was a member at any time during the 12-month period immediately preceding the filing of the statement, must be disclosed, and, in the case of an officer or member whose name is required to be shown in such a statement, each name used by him or by which he is or was known must be stated.

Every organization registered under this section must file with the Attorney General on February 1 following the year of registration, and each year thereafter, an annual report containing substantially the same information required in the registration statement. Every organization registered must keep, in the manner prescribed by the Attorney General, accurate records and financial statements. Every Communist political organization registered must keep, in the manner prescribed by the Attorney General, accurate records of the names and addresses of the members of the organization and of those "persons" who actively participate in the activities of such organization.

The Attorney General is required to send to each individual listed, in any registration statement or annual report filed, as an officer or member of the organization, a written notice of such listing as early as practicable. Upon written request of any individual, so notified, who denies such office or membership, the Attorney General must forthwith investigate the truth or falsity of such denial. If he is satisfied the denial is correct, the Attorney General must strike the name of such individual from the registration statement or annual report. If he declines or fails to strike the name of such individual within 5 months after the receipt of the individual's request, the individual may file a petition for relief with the Board.

If an organization fails to register or to file a registration statement or annual report, as required, it is made the duty of its executive officer and its secretary, and of any other officer or officers prescribed by the Attorney General, to register for such organization or to file the statement or annual report, as the case may be.

SECTION 8

This section provides that each individual who is a member of any organization which he knows to be registered as a Communist political organization, but which has failed to include his name in the membership list filed with the Attorney General, must, within 60 days after obtaining such knowledge, register with the Attorney General as a member of such organization.

SECTION 9

Section 9 provides that the Attorney General shall keep a register of Communist political organizations and Communist-front organizations, which shall include the names and addresses of all such organizations registered under the act, and the various registration statements and annual reports required to be filed.

These registers shall be open for public inspection. It is provided, however, that the Attorney General shall not make public the name of any individual listed as an officer or member of any Communist organization until 60 days after the transmittal of the notification required by section 7 to be sent to such individual. If the individual, prior to that time, requests the removal of his name from any such list, the Attorney General shall not make public the individual's name until 6 months after the receipt of this request or until 30 days after the Attorney General shall have denied the individual's request and shall have transmitted notice of such denial to him, whichever is earlier. The Attorney General is required to submit to the President and to Congress, on or before June 1

of each year (and at any other time when requested by either House by resolution), a report including the names and addresses of the organizations listed in the registers and the names and addresses of the individuals listed as members of the organizations contained in the registers.

SECTION 10

Section 10 makes it unlawful for any individual to become or remain a member of any organization if he knows there is in effect a final order of the Subversive Activities Control Board requiring such organization to register as a Communist political organization, and more than 30 days have elapsed since such order has become final and such organization has not registered as a Communist political organization.

SECTION 11

Section 11 makes it unlawful for any organization which is registered under the act, or is required by final order of the Board to register, or for any person acting for or on behalf of any such organization, to transmit through the mails or through any means or instrumentality of interstate or foreign commerce any publication which it is reasonable to believe is intended to be circulated among two or more persons, unless such publication and the envelope or wrapper in which it is enclosed bears the printed notation that the publication is disseminated by a Communist organization and bears the name of that organization.

It is also unlawful for such an organization to broadcast any matter over any rdio or television station in the United States unless such matter is preceded by a statement that the program is sponsored by a Communist organization and that organization is named.

SECTION 12

Section 12 prohibits the deduction for Federal income-tax purposes of any contribution made to or for the use of any organization if at the time of the making of such contribution such organization is registered under the act or is required under the act to register by final order of the Subversive Activities Control Board.

It also provides that no organization shall be entitled to exemption from Federal income tax for any taxable year if at any time during that year such organization is registered under the act or is required to register by final order of the Subversive Activities Control Board.

SECTION 13

Section 13 establishes the Subversive Activities Control Board. It is to be composed of three members appointed by the President. The term of the members shall be 3 years, subject to removal by the President for neglect of duty of malfeasance in office. Two members of the Board shall constitute a quorum, and each member of the Board shall receive a salary of $12,500 per year, shall be eligible for reappointment, and shall not engage in any other business or employment. The Board is required at the close of each fiscal year to make a report in writing to the Congress and to the President and account for all the moneys it has disbursed.

It is made the duty of the Board, upon application by the Attorney General or by any organization, under section 14 of the act, to determine whether any organization is either a "Communist political organization" or a "Communist-front organization." The Board is also required, upon application, to determine whether any individual is a member of any Communist political organization registered or, by final order of the Board, required to be registered.

The Board is empowered to appoint personnel and to pay them and to make rules and regulations for the performance of its duties.

SECTION 14

Section 14 provides that, whenever the Attorney General shall have reason to believe that any organization or individual required to register under the act has not done so, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register. Any organization or individual registered under the act may, but not oftener than once in each calendar year, make application to the Attorney Gen-

eral for the cancellation of such registration and (in the case of such organization) for relief from obligation to make further annual reports. Within 60 days after the denial of such application, the organization or individual concerned may petition the Board for an order requiring the cancellation of such registration and (in the case of such organization) relieving such organization of obligation to make further annual reports.

In a situation where the Attorney General declines or fails to strike the name of an individual from the registration statement or annual report filed under the act, that individual may file with the Board a petition for an order requiring the Attorney General to strike his name from that registration statement or annual report.

Upon the filing of any petition under this section, the Board, or any member thereof, or any examiner designated thereby, may hold hearings and receive evidence. Provision is made for the compulsory attendance of witnesses and the production of books, papers, etc., at these hearings. Failure to comply with the subpena can result in a court order to comply, and failure thereafter can be punished as contempt of court. All hearings are to be public, and each party has the right to the assistance of counsel. A stenographic record must be taken of the testimony of each witness, and a transcript of such testimony must be filed in the office of the Board.

Section 14 further provides that, in determining whether any organization is a Communist political organization, the Board shall take into consideration a number of detailed factors, among them being the extent to which the organization's policies are formulated and carried out pursuant to directives or policies of the foreign agency in which is vested the direction and control of the world Communist movement, the extent to which its views and policies do not deviate from such foreign agency, the extent to which it receives financial or other aid from or through such foreign agency, the extent to which it sends agents to any foreign country for instruction or training in the fundamentals of the Communist movement, the extent to which it reports to such foreign agency, the extent to which its principal leaders or a substantial number of its members are subject to or recognize the disciplinary powers of such foreign agency, the extent to which it fails to disclose information as to its membership, its members refuse to acknowledge membership, its meetings are secret, and the extent to which its principal leaders or a substantial number of its members consider their allegiance to the United States as subordinate to their obligations to such foreign agency.

In determining whether any organization is a Communist-front organization, the Board must take into consideration the extent to which persons who are active in its management are also active in the management of any Communist political organization, Communist foreign government, or the world Communist movement, the extent to which its support is derived from any Communist political organization, foreign government, or world movement, the extent to which its funds or personnel are used to promote the political objectives of such Communist agencies or movement, the extent to which positions taken or advanced by it on matters of policy do not deviate from such Communist political agencies or movement.

If, after hearing, the Board determines that an organization is a Communist political organization or a Communist-front organization, it shall make a report, including findings of fact, and shall issue an order requiring such organization to register. If it determines that an individual is a member of a Communist political organization, it shall make a report and issue an order requiring that individual to register. If the Board determines that an organization is not a Communist political organization or a Communist-front organization, it shall make its report and serve upon the Attorney General an order denying his petition for an order requiring such organization to register. If the Board determines that an individual is not a member of any Communist political organization, it shall make its report and serve upon the Attorney General an order denying his petition for an order requiring such individual to register.

Where a petition for cancellation of registration has been filed by an organization and denied by the Attorney General and the Board determines that the organization is not a Communist political organization or a Communist-front organization, it shall make its report and serve upon the Attorney General an order requiring him to cancel the registration of such organization and relieve it of the requirement of filing further annual reports.

Where a petition for cancellation of registration has been filed by an individual and denied by the Attorney General and the Board determines that the individual is not a member of any Communist political association or (in the case

of an individual listed as an officer of a Communist-front organization) that the individual is not an officer of a Communist-front organization, it shall make its report and serve upon the Attorney General an order requiring him to strike the name of such individual from the registration statement or annual report upon which it appears, or to cancel the registration of such individual under section 8, as may be appropriate.

In a case where the Attorney General has declined or has failed to strike the name of an individual from a registration statement previously filed by that individual or by a Communist political organization or a Communist-front organization and the Board determines that the individual is not a member of any Communist political organization or an officer of a Communist-front organization, as the case may be, it shall make its report and serve upon the Attorney General an order requiring him to strike the name of such individual from the registration statement or annual report, or to cancel the registration of such individual.

In the case of a request made by an organization for cancellation of its registration and the Board determines that such organization is a Communist political organization or a Communist-front orgnization, it shall make its report and issue an order denying the organization's petition for cancellation. In the case where such request for cancellation is made by an individual and the Board determines that the individual is either a member of a Communist political organization or an officer of a Communist-front organization, it shall make a report and serve on such individual an order denying his petition for an order requiring the Attorney General to strike his name from any registration statement or annual report, or to cancel the registration of such individual.

SECTION 15

Section 15 (a) provides that the party aggrieved by any order entered by the Board under section 14 may obtain a review of such order in the United States Court of Appeals for the District of Columbia by filing in the court, within 60 days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. The court has power to affirm or set aside the order of the Board. The findings of the Board, however, as to the facts, if supported by the preponderance of the evidence, shall be conclusive. The judgment and decree of the court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari.

Section 15 (b) specifies the time, under varying conditions, when Board orders become final.

SECTION 16

Section 16 deals with penalties. If there is in effect with respect to any organization or individual a final order of the Board requiring registration under the act, any such organization, upon conviction of failure to register, to file any registration statement or annual report, or to keep records, and any such individual, upon conviction of failure to register or file a registration statement or annual report, when required to do so under the act, shall be punished for each offense by a fine of not less than $2,000 or more than $5,000, or imprisonment for not less than 2 years and not more than 5 years, or by both such fine and imprisonment. If any individual willfully makes any false statement or willfully omits to state any material fact in a registration statement or annual report filed under the act, he shall, upon conviction, be subject to the name punishment above mentioned for each offense. Each false statement and each willful omission to state a material fact is regarded as a separate offense, and each listing of the name or address of any one individual is regarded as a separate statement.

Any organization which violates section 11 (the use of the mails, etc., to transmit a publication without identifying it as a Communist publication, and the broadcasting over radio or television unless it is preceded by a statement that the broadcast is sponsored by a Communist organization) shall be fined not less than $2,000 and not more than $5,000. Any individual who violates section 11 or sections 5 (relating to employment of members of Communist political organizations), 6 (relating to passports to members of Communist political organizations), 10 (relating to membership in certain Communist political organizations, where such an organization has not registered although required to do so by final order of the Board) is subject to a fine or from $2,000 to $5,000 or imprisonment for not less than 2 years and not more than 5 years, or to both such fine and imprisonment.

SECTION 17

Section 17 provides that the Administrative Procedure Act shall be applicable to the exercise of functions by the Board under the act, except to the extent that the act affords additional procedural safeguards for organizations and individuals.

SECTION 18

Section 18 states that, if any provision of the act or the application thereof is held invalid, the remaining provisions, or the application of such remaining provisions, shall not be affected thereby.

FORMAL STATEMENT OF HON. ARTHUR G. KLEIN, OF NEW YORK, IN OPPOSITION TO H. R. 3903 OR TO ANY OTHER LEGISLATION OF A SIMILAR NATURE

Mr. Chairman and members of the Committee on Un-American Activities, the purpose of this statement is to express my unalterable opposition to H. R. 3903, a bill to combat un-American activities by making it unlawful for Federal employees and for individuals employed in connection with national defense contracts to be members of or affiliated with the Communist Party or certain other subversive organizations, or for other purposes.

It is my position that every useful end which might be served by the enactment of this bill is adequately provided for in existing legislation and security regulations, and that the ends not already encompassed would be against public interest and violative of precious rights of Federal employees.

1. EXISTING LEGISLATION

It is self-evident that every offense committed by an employee of the Federal Government or of a contractor of the Federal Government against the peace and security of this country is punishable by the same general laws against espionage, sedition, conspiracy, and a similar category of offenses that would apply to any other citizen or alien.

In addition, there are a number of specific restrictions, chiefly enacted as riders on appropriation bills, solely or chiefly affecting Federal employees; among these are the laws prohibiting membership in an organization which advocates the right of Federal employees to strike and those requiring each employee (including Members of Congress) to sign a statement as to affiliation with certain proscribed categories of organizations before payrolling.

Pursuant to that mandate, the Civil Service Commission includes in the standard employment application Form 57 these questions:

"27. Are you now, or have you ever been, a member of the Communist Party, U. S. A., or any Communist organization?" _____

"28. Are you now, or have you ever been, a member of a Fascist organization?" _____

"29. Are you now, or have you ever been, a member of any organization, association, movement, group, or combination of persons which advocates the overthrow of our constitutional form of government, or of an organization, association, movement, group, or combination of persons which has adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States or of seeking to alter the form of Government of the United States by unconstitutional means?" _____

"If your answer to question 27, 28, or 29 above is "Yes," state in item 39 the names of all such organizations, associations, movements, groups, or combination of persons and dates of membership. Give complete details of your activities therein and make any explanation you desire regarding your membership or activities therein."

The penalties of perjury are incurred by an untruthful answer to these and other questions; administrative penalties may be imposed in lesser offenses in lieu of prosecution.

The Hatch Act has stood for 11 years as a further safeguard.

2. PRESENT REGULATIONS

The security precautions of the executive offices have proved ample to guard the safety of the United States.

First in magnitude and importance is the so-called loyalty program established under Executive Order 9835 and codified in the Federal Code of Regulation as title 5, chapter II.

Certain key agencies are authorized to take summary action by special legislation; while all national defense agencies, including the Atomic Energy Commission, have security programs going far beyond a mere routine check of employees.

The Central Intelligence Agency is charged with a heavy responsibility in counterintelligence and, with the Federal Bureau of Intelligence, appears to be doing a highly competent job.

3. THE BILL IS TOO NARROW

This measure would set up a narrowly defined proscription of certain affiliations which already are proscribed by administrative action and would appear to be class legislation in the light of guiding judicial decisions.

It freezes into statute the flexible administrative program already under way and runs a grave risk of frustrating the counter-intelligence activities of our proper intelligence units.

Any legislation of this nature is, of course, subject to abuse in the hands of irresponsible administrators and minor employees; there probably is no Member of this Congress who has not had some personal experience with an individual injustice growing out of the loyalty program.

While by reference the bill incorporates the entire list of affiliations proscribed by the Attorney General, the accent of the instant measure on Communist Party affiliation is highly misleading and would encourage the careless and the gullible to believe that the Congress sees no harm in subversive organizations of the extreme right.

It cannot be too often repeated that the activities of fanatic Communists and their adherents are not the only danger to the internal and external saftey of this country.

It cannot be too often repeated that in a nation firmly founded on democratic processes we cannot and dare not risk the loss of fundamental freedoms under the lash of a temporary hysteria.

4. THE BILL IS IMPRACTICABLE

The obvious purpose of the proposed legislation is to minimize the danger of betrayal of this Nation by persons with a greater loyalty to another country than to our own.

In actual operation such legislation would tend to frustrate other and more practicable security measures by reducing the conspicuousness of the genuine spy or saboteur; it would have the effect of giving a true spy or traitor a protective coloration making him more difficult to detect.

5. THE BILL IS TOO INDEFINITE TO BE ENFORCEABLE

If enacted, which I sincerely hope will never occur, the bill is too loosely drawn to be enforceable. There is no statutory or judicial definition of "un-American" and there obviously can be none; the term is impossible of objective definition because, inherently and semantically, it is a subjective adjective which is given meaning only in the mind of the person using it.

Similarly, there is no statutory or judicial definition of the term "subversive." While it is true that an objective definition could be framed for this adjective, it would be difficult because of its subjective connotations, which would make its enforcement difficult if not impossible.

IN SUMMARY

In summary, Mr. Chairman, I repeat that I oppose this and all similar legislation as unwise, impracticable, dangerous, unnecessary, and redundant, and too loosely drawn to be enforced.

FORMAL STATEMENT BY UNITED STATES REPRESENTATIVE ARTHUR G. KLEIN, OF NEW YORK, TO THE COMMITTEE ON UN-AMERICAN ACTIVITIES IN OPPOSITION TO H. R. 7595 OR ANY SIMILAR LEGISLATION

Mr. Chairman and members of the committee, I am opposed to the bill H. R. 7595 to protect the United States against certain un-American and subversive activities, and for other purposes, on the grounds that the bill is too vague, its criminal sanctions too harsh, that it is unnecessary and redundant, that every good purpose which might be served by the bill's enactment is better served by existing legislation and administrative action, and that its other purposes are themselves dangerous and subversive of American democracy.

It is my considered opinion that the mere introduction of this legislation, or any similar legislation, and the dignity given it by formal hearings, is an abject confession of lack of faith in the ideals of democratic living, and appears to me to be a serious effort to introduce totalitarian uniformity of political thinking under the guise of making totalitarianism unlawful.

I am sure that the sponsor of this bill is motivated by a sincere desire to protect the United States against foreign and domestic enemies, which is a meritorious and desirable purpose; but I disagree profoundly with the means.

I should like to remind the committee that one of the most brutal tenets in the whole depressing manual of revolutionary communism is that the end justifies the means. This does violence to the modern concept of ethics, and to the basic premises of the democratic way of life.

I feel that the enactment and active enforcement of such legislation would weaken our democracy and destroy that which all of us seek to protect.

With some change in language but with no change in its nature and ultimate ends, this is the measure which I fought in the Eightieth Congress, which I fight today, and which I shall continue to fight.

At the outset, I want it clearly understood that my opposition to all legislation of this kind springs from my own deep faith in the strength of American democracy, and not from any external influence.

1. THE BILL IS REDUNDANT AND UNNECESSARY

Every useful and desirable purpose that could or would be served by the enactment of such legislation already exists in the statutes of the United States or in the explicit powers bestowed on the Chief Executive by the Constitution.

Mr. Chairman, I instituted a search of the United States Code for existing law to prove this measure to be duplicative and redundant. I was startled anew to discover with what minute supervision the eighty Congresses which have preceded this one into history have acted to safeguard the security, the dignity, and the sovereignty of this Nation, without violation of the letter or the spirit of the Constitution and the noble principles of representative self-government by majority rule, without threat to the rights of dissident minorities, on which this great Nation has flourished and endured since the Declaration of Independence in 1776.

We found that scarcely a chapter in any title of the code was without some measure of national protection. We found that every useful purpose which might be accomplished by H. R. 7595 or a variation of it is being accomplished under present law, or by Executive action under explicit powers.

Because of the sheer bulk of the notes which resulted from this search, we have reduced the catalog of sections to those of major importance and have prepared the notes in the form of an appendix annexed to this statement; I request that it be included as a part of my statement.

The 1946 edition of the code was used. Even in synopsis form, the resulting citations from titles 8, 18, and 50 are so voluminous that we mentioned some titles only by name and number; and we have skimped on the appendix to title 50 and the supplements issued since 1946, containing enactments subsequent to the general edition.

I was impressed by the fact that with the exception of the quickly repealed Sedition Act of 1798 statutory enactments up to 1939 had studiously refrained from entering the field of thought and association; beginning with the Hatch Act in that year there has been a regrettable tendency to attempt to emulate the Fascist and Communist dictatorships by proscribing "naughty thoughts."

The instant bill represents, perhaps, the most startling innovation in that field ever seriously considered by a congressional committee; and I trust sincerely that, as I shall show, the views of the author of the bill on other comparable legislation will prevail here.

(See appendix for recapitulation of citations to the 1946 United States Code, and for statement by Hon. William O'Dwyer, mayor of New York City, in 1948, in opposition to Mundt-Nixon bill in Eightieth Congress.)

2. THE BILL IS VAGUE AND WOEFULLY LOPSIDED

The title of H. R. 7595 instantly raises questions of constitutionality in its vagueness.

A careful search of the laws fails to disclose a statutory crime of subversion; as codified, the subtitles of the Smith Act refer to subversive activities but the text does not refer to them directly in the category of prohibited acts under the subtitles. (See U. S. C. 18, secs. 9 to 15, inclusive).

Undoubtedly it would be possible though difficult to frame an objective judicial or legislative definition of subversion and to make specific acts definable as subversive illegal; but it is utterly impossible to arrive at any objective definition of un-Americanism.

Acts highly patriotic to one good citizen are despicably un-American to another. The phrase is, and must be, completely subjective, as a matter of semantics. It can have only that meaning by which it is clothed in the mind of the speaker.

To me, for example, the invasion of private beliefs and associations and the imposition of a standard of political and economic orthodoxy, together with the extremely dangerous current tendency to freeze the current economic system or systems into statute, are highly un-American.

To some of my colleagues, and in equally good faith, the very opposite is true.

I hope the time will never come in America when I can impose my beliefs on another person, or another person can impose his beliefs on me, by force of law or arms.

The policy statement incorporated in H. R. 7595, under the heading "Necessity for Legislation," raises the same issue of subjectiveness.

There is no factual statement in this preamble with which I strongly disagree, and only one or two conclusions of opinion in which I believe the validity of the logic is dubious.

What I disagree with violently is the thesis that the remedy for the threat lies in undemocratic suppression of free opinion and the imposition of drastic criminal sanctions to enforce that suppression. In this I stand with Oliver Wendell Holmes and other great American lawyers and jurists who insisted on the capacity of truth to find acceptance in the free market place of ideas. If this is a pragmatic concept of political teleology, it is self-evident that the genius of America has been pragmatic, and any effort to bend that genius to dogma must fall, or destroy the genius which has made this country great.

The attempt in sections 2 and 3 to define totalitarianism only in terms of communism is absurd on its face.

The dogma on which a totalitarian government rests is unimportant to the effect on the governed; a totalitarian government may be a personal dictatorship, a dictatorship by a class, or by a caste, or by a clique or junta. Totalitarian dictatorships may and often do repudiate in practice the principles to which they subscribe in their published ideology. Perhaps the most damning indictment of Communist dictatorships in those countries where they exist is their brutal perversion in the practice of statecraft of the principles they publish to the world.

Aside from the philosophical inaccuracy of these sections, they quite obviously open the way to subjective interpretation and consequent abuses and injustices. It would be an emotional and intellectual impossibility for any group of fallible men to make an objective finding of the facts and the law under these definitions.

Similarly, the attempt in section 4 to define as acts what may be only thoughts or utterances introduces a novel principle into American concepts of justice and law.

There is a strong clash between succeeding sentences of this section. In the first sentence of section 4 (a) the "act" declared unlawful is anything substantially contributing to a totalitarian dictatorship "the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual."

The succeeding sentence, much more rationally, gives a definition of a "totalitarian dictatorship" in terms of any dictatorship in which there is no practical distinction between the single dominant political party and there is forcible suppression of all opposition to the party.

But for the life of me I cannot tell whether the crime the section attempts to define is limited only to an effort to establish a foreign-dominated dictatorship, or extends to any kind of totalitarian dictatorship.

Paragraphs (b) and (c) set up a category of crimes in which the principal factor is knowledge or reason to believe.

Apparently enforcement of these fantastic provisions is to lodge with the Attorney General; but what prosecutor, what court, what jury, can look into the minds and hearts of accused and of accuser and say what knowledge or reason to believe lay there? The paralyzing fear of prosecution through some error of judgment would reduce public administration to an ineffective palsy of indecision.

The bland disregard of existing dictatorships of the extreme right is not flattering to the intelligence and knowledge of the American people.

It is true that the three principal and explosively expanding totalitarian governments of the extreme right—Hitler's Germany, Mussolini's Italy, and Hirohito's Japan—have fallen; there still exists one totalitarian and authoritarian regime deliberately patterned on and fostered by the Italian and German fascist dictatorships, and actively and expensively propagandizing in the United States today.

I refer now to Falangist Spain, in which Dictator Franco maintains a government no less absolute than Hitler's, and differing in political dogma from Hitler's only in about the same degree quantitatively and qualitatively as Mussolini's corporative state differed from Hitler's Nazi state.

There are a number of personal dictatorships of the nature of total government but resting on little in the way of party dogma or ideology. At least one of these—that of Perón in Argentina—seems to be headed in the direction of complete totalitarianism, including absolute one-party rule, active foreign propaganda with an ultimate aim of imperialist expansion by force, suppression of dissident opinion by police state methods, and abrogation of all civil rights. In Argentina's threat to the contiguous free republics of South America, and to the peace and harmony of the Western Hemisphere, there appears at this stage to be no real difference between the Russia of Stalin, the Germany of Hitler, the Italy of Mussolini, the Japan of Hirohito, and the Argentina of Perón.

Except as the phrase, "totalitarian dictatorship," is all-embracing, there is nothing in this bill to indicate any recognition of totalitarianism except that of militant revolutionary communism.

3. THIS BILL IS CLASS LEGISLATION OF A PECULIARLY VICIOUS KIND

It singles out for opprobrious sanctions a small and limited class of American citizens, and condemns them, not by judicial process but by legislative and administrative fiat, and (with minor exceptions) not for overt acts of criminal nature but for passive association and for alleged thoughts and beliefs.

4. THIS BILL WOULD OPEN THE DOOR TO CRUEL DISTORTION AND ABUSE

No single person or administrative body should ever, in a Nation calling itself democratic, be given such broad and sweeping powers of condemnation over other persons as would be bestowed by this bill to the Subversive Activities Control Board.

This bill would deliver to a small body of men of fallible knowledge and decision absolute power over the thoughts and associations of our whole population.

There is no use in saying that such power would not be abused, or that safeguards against abuse will be written in.

It is legalistically impossible to write safeguards which will prevent abuse of such vast and dictatorial power of destruction. The definitions in the bill are vague and sweeping, and the language constitutes an invitation to the Control Board to exercise its great powers on a subjective basis; the Board's answerability to the courts is less than perfect, since no aggrieved party could conceivably recover in a favorable judgment the good name lost by the original administrative decision.

Merely to carry out its defined duties the Board would require an army of investigators, with a constantly widening latitude of faulty and subjective judgments in each descending echelon of authority.

5. THE BILL IS DANGEROUS AND SUBVERSIVE OF AMERICAN FREEDOMS

Such legislation, by whatever name it may be called, opens the door to the very evils it seeks to guard against.

By proscribing an unpopular political and economic dogma, this measure would introduce totalitarian controls of thought and association, a principle deeply repugnant to the Constitution, to American traditions, and to the best that has been written by our founding fathers and political leaders.

Thomas Jefferson said: "Subject opinion to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons" (from Notes on Virginia, Query 17).

6. THERE IS, AND BY DEFINITION CAN BE, NO ADEQUATE SAFEGUARD IN THE BILL AGAINST FALSE ACCUSATION OF GROUPS HAVING NO PRIMARY POLITICAL SIGNIFICANCE.

While I cannot conceive of a time when this measure would be sustained by the courts, judicial adjudication necessarily takes a long time; and in the meanwhile, with no recourse, many groups primarily ethnic or religious would be open to false accusation, shame, and disgrace. Labor unions would be vulnerable. Such religious groups as Jehovah's Witnesses and the Society of Friends, with their pacifist views, would be among the first to be stoned.

7. THE PENALTIES PROVIDED ARE UNDULY HARSH

The bill abandons principles of court procedure and legislative standards which have grown up through centuries of slow evolvement to their present state, which is yet less than perfect.

8. THIS IS THE WRONG WAY TO PRESERVE OUR DEMOCRATIC WAY OF LIFE

If the same energy put behind this bill were devoted to enactment of the President's civil rights program, the country and the world would be better served.

The way to preserve our democracy is to make it more democratic, not less so.

When every man has an equal opportunity to earn a living, regardless of race, religion, national derivation, creed, or status; when every man is equally safe from assault, discrimination, and illegal action by law officers; when every man is equally free, and freely equal, within the obvious limitations of his own natural gifts; when every man is judged on his own worth, and not by any external qualification, then, I assure you, the Communist Party will wither away and disappear.

All revolutionary parties, regardless of their ideological content, thrive on discontent, insecurity, discrimination, and fear.

I condemn as boldly as any member of your committee the chicanery, the deceit, the doubletalk and the absolutism of revolutionary communism. However, the whole approach of this bill to the very real economic, political, and social problems of our country is negative.

I differ from the author of this measure in believing that not repression and indiscriminate proscription but redress of grievances is the answer to the discontent on which, in the black depression years, the Communist Party gained its greatest membership in the United States and elsewhere, while revolutionary fascism took over absolute power in Italy, Japan, Germany, and Spain.

By your own figures, the Communist Party of America is today in a parlous state. Its membership has shrunk to a small figure, about one thirtieth of 1 percent of the population.

As for fellow travelers, I am sure that those who were not shaken loose by the Hitler-Stalin alliance in 1939 have been jarred from their emotional moorings since the end of World War II.

The only members left in the Communist Party in the United States are the hard core of fanatics—those to whom communism is less a political and economic panacea for obvious wrongs than a religion to which they cling with psychotic fervor.

This legislation would create martyrs of the true Communists, and might even arouse sympathy among many people hitherto disgusted by the terrorism, the imperialist aggression, and the blind bigotry of communism, both as a world movement and as a personal religion.

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Mr. Chairman, and members of the committee, I urge you to drop this bill, and to devote the resources of your committee to ferreting out the real un-American activities which are on every side—the hooded terror of the Ku Klux Klan and its imitators; the insecurity, political and economic, of our Negro citizens in every State; the open advocacy of falangism and the existence of Falangist cells under one name or another in some of our States, especially where there is a Spanish-speaking population; economic and political discrimination against many minority groups, whether ethnic, religious, economic, or political; the resurgence of pan-Germanism in the United States; the creeping paralysis of monopoly enterprise which is clutching at the throats of free and open business competition of small units.

You have a vast field in which to operate.

It is a disservice to the House and to the country to become so obsessed with one danger that you fail to see other and equally real un-American activities.

I cannot add anything to my opposition. I am against the bill, section by section, line by line.

I can, however, if the committee will permit, point out a curious inconsistency on the part of the author of the bill, the gentleman from California, Mr. Nixon.

On March 22, 1950, at page A 2249, the gentleman inserted an editorial in opposition to a proposal made in the other body for the licensing of the motion-picture industry.

The gentleman's position on the censorship proposal almost precisely expresses my own views on the bill which you have under consideration.

I ask permission of the committee, Mr. Chairman, to include the remarks of the gentleman from California, Mr. Nixon, as a part of the record on the instant bill, and I ask that the committee take into consideration the utter lack of consistency between his authorship and support of the Subversive Control Act of 1950 and his strong opposition to an almost identical proposal affecting the motion-picture industry.

MORE FEDERAL CONTROL

"Extension of remarks of Hon. Richard M. Nixon, of California, in the House of Representatives, Wednesday, March 22, 1950.

"Mr. NIXON. Mr. Speaker, one of the most startling and dangerous proposals which has been made in recent years is the suggestion that a Federal bureau should be set up for the purpose of licensing the motion-picture industry. Even actors and actresses would be required to take out licenses with the Government before they could appear in pictures. The ostensible purpose of this proposal is to improve the standard and quality of motion pictures. The ultimate effect of it, however, can be not only censorship of motion pictures themselves but also complete control of the individual lives of those who appear in and produce the pictures.

"But the greatest threat inherent in this proposal is the precedent that would be established. It would open the way toward licensing everybody who engages in interstate commerce. This, in the final analysis, gives the Federal Government the power to deny a license to anybody whose business standards and personal behavior it does not approve. Right now we should be giving more thought to reducing the power of the Federal Government to control our individual lives and fortunes rather than considering proposals to increase that power.

"The motion-picture industry has established its own governing body to enforce a code of morals and ethics. Under this procedure, the industry has been eminently successful in raising the moral standards of the films it produces. True, under this self-regulation, the code governs only the productions themselves and does not apply to the private lives of those who appear in the pictures. But I see no more reason for the Federal Government to set itself up as the arbitrator of the moral conduct of individuals in the motion-picture field than I do in any other field of private employment."

Mr. Chairman and members of the committee, I agree with the gentleman's position here absolutely.

I am opposed to such authoritarian controls.

I am opposed to them in the moving-picture industry, in publishing, in politics, in religion, and in this legislation.

STATEMENT OF JAMES G. PATTON, PRESIDENT NATIONAL FARMERS UNION, SUBMITTED TO THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, MARCH 31, 1950, IN OPPOSITION TO H. R. 7595 AND H. R. 3903

By this time, it should be clear to everyone that repressive legislation of the kind before this committee not only does not achieve the objectives it is designed to achieve but actively interferes with the fulfillment of the best in American traditions.

H. R. 7595, the Mundt-Nixon bill, has been before Congress some time now. Its provisions are well known and it is not necessary at this time to go at length into its specific provisions.

The National Farmers Union always has regarded this legislation as unconstitutional and that it authorizes invasions of individual liberties which are repugnant to the basic character of our national existence. Denial of the fundamental guaranties of individual liberties contained in the Bill of Rights and elsewhere in the Constitution cannot but weaken that magnificent document as a whole.

Perhaps we should recall the experience of the American people with national prohibition. During the dismal period when the eighteenth amendment was in force, disrespect for law had extended so far as to include disrespect for the Constitution itself. The genius and spirit of the American people tends toward the utmost possible personal freedom compatible with the orderly workings of society. It is our firm conviction that legislation such as the Mundt-Nixon bill goes as much counter to this spirit as did the eighteenth amendment, and that ultimately any such legislation is bound to become a dead letter.

The unfortunate part of such procedure, however, is that while this was happening great damage might be done to the public faith in the Constitution itself.

Aside from the constitutional objections, we also feel that such bills as the Mundt-Nixon bill inevitably tend to cast the American people in the image of totalitarianism. As we see it, the greatest danger we have to face in the years immediately ahead is the temptation to fight fire with fire. In other words, if we adopt suppressions of thought, of speech, of assembly, and even of belief, every instance of such suppression brings us closer to the kind of policy against which we are invoking these various suppressions. The best hope of America is now as it always has been the strict and faithful adherence to the best in American precedence in history. That best, as it differentiates us from other peoples, is embodied primarily in the assurances of personal freedom contained in the Bill of Rights.

As for H. R. 3903, the Wood bill, we have somewhat the same objections but on a minor scale to this bill as we have to H. R. 7595. H. R. 3903 is the same type of legislation. Its provision for barring Government workers from contributing to organizations officially labeled as subversive appears to us to be simply another way of cluttering up the statutes. The executive branch now has a wholly adequate system of assuring the loyalty of governmental employees. In fact, we believe that the so-called loyalty check program itself is an extravagant misuse of Government power and that the question of treason is such as to call for careful and scientific investigation by investigative agencies rather than the elaborate machinery now in existence. In any case, existence of the present system certainly makes it unnecessary further to overload the statutes in this field.

As to the provisions in the bill which would attempt to extend this kind of screening to private employees of firms obtaining governmental defense contracts, we regard these as wholly fantastic. The establishment of the kind of comprehensive snoopery that would be required to enforce such a provision would involve an enormous amount of useless expense to the Government, wholesale invasions of personal liberties, and a genuine foundation for an American police state. We regard this proposal as so alien to anything American, as we conceive it, that we consider it unnecessary to go into further detail as to our reasons for opposing it.

In summary, we urge that the committee permanently table both of these measures.

STATEMENT OF THE NATIONAL CIVIL LIBERTIES CLEARINGHOUSE

JOINT STATEMENT IN OPPOSITION TO THE MUNDT-FERGUSON-JOHNSTON AND NIXON BILLS (S. 2311 AND H. R. 7595)

The Senate Judiciary Committee on March 21 reported out the Mundt-Ferguson-Johnson bill (S. 2311). This bill differs only slightly from S. 1194 (Mundt) and S. 1196 (Ferguson), on which hearings were held last spring. Its major objections are to compel registration by "Communist political organizations" and "Communist-front organizations" and to impose criminal sanctions on individuals for various "subversive activities," whether or not in connection with such organizations. Meanwhile, Mr. Nixon has introduced H. R. 7595, identical with the new Senate bill, into the House of Representatives, and hearings on it have been begun by the Committee on Un-American Activities.

We who sign this statement are completely and unalterably opposed to communism and all threats to our national security, whether from the extreme right or the extreme left. We are equally opposed to any violation or weakening of the civil liberties guaranteed in the Constitution—freedom of speech, press, and assembly; due process; and all othe other great foundations of our democracy. We believe the proposed legislation would be such an unconstitutional violation of those civil liberties, and would be more dangerous to our American democracy than the evil it seeks to control. We believe, moreover, that its passage would materially aid the cause of Communism. It would thus undermine the structure of the American Government and the American society which it ostensibly is meant to buttress.

In our opinion, there are three basic characteristics of the proposed legislation which render it both undesirable and unconstitutional:

(1) The language of the bill, which makes criminal any act which would substantially contribute to the establishment of a foreign-controlled totalitarian dictatorship, violates the due-process requirements of the Constitution because of its vagueness. The vagueness of the phrase "subsantitally contribute" threatens the organizational activity of the entire liberal movement in the United States since people would be afraid to join with their fellow citizens to seek any form of change, progress, or reform which is or might be supported by the Communists. It is standard technique for the Communists to give lip service to a great many liberal causes for their own nefarious purposes. In addition, if enacted, the bill might well be construed as making criminal the performance by an attorney of his duty in defending a Communist client. It might even make criminal the mere advocacy of the repeal of the law itself.

(2) It would inflict serious penalties on individuals—criminal sanctions, social and economic ostracism, and character assassination—merely on the ground of association with certain organizations whose natures are not themselves defined with sufficient precision, and would thus inevitably restrict inquiry and thought, belief, and expression.

(3) The bill would inflict penalties by legislative proscription of organizations instead of by judicial proceedings in which said organizations would be individually tried in accordance with our constitutional guaranties. Hence the bill is a bill of attainder; this is shown, for example, by the fact that members of Communist political organizations face loss of passport privileges and access to Federal employment, merely by virtue of their membership and not after determination by the courts.

Moreover, it is our conviction that the enactment of the proposed legislation is completely unnecessary for American security and indeed perversely likely to strengthen the very enemies it is intended to disarm. The registration provisions of the bills would not give the Government any information which the FBI does not already possess, nor is it needed to authorize the prosecution of anyone for actual acts which are genuinely subversive—they are already covered adequately by a number of laws. On the other hand, Communists, who would have to label their propaganda as such, would be clever enough to support publicly only the worthiest ideas, in an attempt to enhance the appeal of communism; and every good cause to which they added their unwelcome help would be tarred with their brush, and non-Communists who believed in the same cause would be subject to the unjust accusation of furthering the designs of communism and the Soviet Union. Communism and all its works were never at a lower ebb in American public opinion than they are today. Driving the Communists underground can only make it more difficult to combat them. Helping the Communists make martyrs of themselves can only enhance the appeal they make to the unthinking.

Our supreme interest in defeating the proposed legislation is self-interest—the self-interest of all of us Americans who are not Communists but uncompromising opponents of all totalitarian dictatorships. If this proposed action is taken against Communists today, a dangerous precedent is created for extending it tomorrow to progressives, socialists, or trade-unionists. Let such fear be called fanciful, we call attention to a recent statement by Guy Gabrielson, Republican national chairman, that the socialists will be next * * * "We haven't gotten around to spotlight them yet, but I promise you we will. Avowed socialists have no more place in the official family of the President of the United States than have Communists * * * socialism is just the first step toward communism."

The only important fear which we need have of Communists in this country today is that they will provoke us into suicide, by piecemeal destruction of our own free institutions. Police-state tactics will not destroy communism. We must not forget that in Czarist Russia, the first nation in which communism triumphed these tactics turned out to be a boomerang. By refusing to adopt police-state tactics, America will strike the heaviest possible blow against communism, and preserve its own democracy.

Patrick Murphy Malin, national director, American Civil Liberties Union; Charles M. LaFollette, national director, Americans for Democratic Action; Dr. Ralph E. Himstead, general secretary, American Association of University Professors; Elmer W. Henderson, director, American Council on Human Rights; Helen Blanchard, legislative representative, Amalgamated Clothing Workers of America, CIO; John Slawson, executive director, American Jewish Committee; David W. Petegorsky, executive director, American Jewish Congress; Michael Straight, chairman, American Veterans Committee; Benjamin R. Epstein, executive director, Antidefamation League of B'nai B'rith; Rev. Thomas B. Keehn, legislative secretary, Council for Social Action, Congregational Christian Churches of the U. S. A.; E. Raymond Wilson, executive secretary, Friends Committee on National Legislation; Jacob Pat, executive director, Jewish Labor Committee; Ben Kaufman, executive director, Jewish War Veterans of the U. S. A.; Isaih M. Minkoff, executive director, National Community Relations Advisory Council; Mrs. Irving M. Engel, president, National Council of Jewish Women; Elisabeth Christman, secretary-treasurer, National Women's Trade-Union League; Philip Schiff and Herman Shukofsky, cochairmen, Social Action Committee, National Association of Jewish Center Workers; John W. Edelman, legislative representative, Textile Workers Union of America, CIO.

STATEMENT OF DAMES OF LOYAL LEGION OF THE UNITED STATES OF AMERICA

URGE ENACTMENT OF COMPREHENSIVE LEGISLATION ON UN-AMERICAN AND SUBVERSIVE ACTIVITIES

Whereas there exists a Communist or Marxian movement, which is a world-wide revolutionary political movement, whose purpose is to establish a Communist or Marxian totalitarian dictatorship in all countries of the world through the medium of a single Communist political organization; and

Whereas the recent successes of radical methods in other countries present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent Nation, and to guarantee to each state a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy designed to prevent it from accomplishing its purpose in the United States; Therefore be it

Resolved, That the Dames of the Loyal Legion of the United States of America unqualifiedly endorse the principles contained in H. R. 3342, as originally intro-

duced by Representative Nixon, to regulate and control activities of Communists and Communist-front organizations.

Miss Frances Eddy Curtiss,
National President, Dames of the Loyal Legion of the United States of America.
Detroit, Mich.

Statement Submitted by the American Labor Party

The American Labor Party respectfully urges the defeat of the Mundt-Nixon bill (S. 2311; H. R. 7595).

The American Labor Party, New York's Progressive Party, associates itself with, and joins in, the statement presented to this committee by Prof. Thomas I. Emerson, on April 4, 1950, in behalf of the Progressive Party.

In addition, we submit the following brief statement:

The Mundt-Nixon bill is a legislative blueprint for fascism in America. It is derived, in spirit, purpose, and content, from a series of decrees issued in 1933 by the Nazi Government at the express direction of Adolph Hitler and Paul Goebbels. These official Nazi decrees were entitled as follows:

"Law regarding the revocation of naturalization and the deprivation of German citizenship—Reichsgesetzblatt, 1, 480, July 14, 1933. Regulation to implement this law—Reichsgesetzblatt, 1, 538, July 26, 1933."

"Emergency decree for the protection of the people and the state—February 28, 1933."

The February 28, 1933, decree referred to, provided as follows:

"Articles 114, 115, 117, 118, 123, 124, and 153 of the constitution of the German Reich are hereby suspended until further notice."

This Hitler decree arbitrarily suspended existing guaranteed rights to free expression of opinion, freedom of the press, the right of assembly, the secrecy of the mail, telephone, and telegraph. The Mundt-Nixon bill would similarily nullify existing constitutional guaranties essential to the liberties of the American people.

Section 4–a of the Mundt-Nixon bill would make it a crime for any person "Knowingly to combine, conspire, or agree with any other person to perform an act which would substantially contribute to the establishment, within the United States, of a totalitarian dictatorship, the direction and control of which is to be vested in, or exercised by, or under the domination or control of, any foreign government, foreign organization, or foreign individual." Under this section, the right of the people to associate together freely to advance their common views, or to support or oppose legislation, would be nullified and rendered a crime.

By arbitrarily labeling any activity as "an act which would substantially contribute to the establishment * * * of a totalitarian dictatorship," the Board set up under the bill could make it a criminal offense for persons to join in common action for ending the cold war; for effective rent control; for outlawing discrimination by passage of the FEPC, antilynch and antipoll tax legislation; for low rent public housing; for health insurance; for Federal aid to education; for increase in social-security benefits and coverage.

At this very moment, the white supremacists and the fomenters of bigotry and bias are alleging that FEPC legislation is "totalitarian dictatorship." The real estate interests are alleging that rent control and public housing are "totalitarian dictatorship." The opponents of health insurance are alleging that it is "totalitarian dictatorship" to provide urgently needed medical and health care to the American people. The monopolies are screaming that any increase in old-age benefits, unemployment insurance benefits, is "totalitarian dictatorship."

The Mundt-Nixon bill would write into the law of the land these deliberately lying labels—and would strait-jacket the American people into a pattern of thought control. The Board would be the dictatorial arbiter of political orthodoxy in this country. Dissent—by anyone—would mean criminal prosecution. Difference of opinion on issues would be a crime. America would be degraded to a police-state level.

The Mundt-Nixon bill is aimed at the liberties of all—regardless of their political affiliations—who seek to exercise the right of the people to speak their minds, to hear every viewpoint on public questions, and to act in common to advance a shared view.

Professor Emerson has, in his statement before this committee, analyzed in detail the separate sections of the bill. We should like to point out, in addition, that under section 11 the door would be opened for an examination of every letter posted. The ostensible pretext would be that the Board is seeking to determine whether the requirement for labeling wrappers "Disseminated by ————, a Communist organization" has been complied with. Thus, under this section, the mails would become subject to un-American invasion of the basic privacy of communications. Similarly, under this section, censorship of all radio scrips in advance would be established, on the same pretext.

The American Labor Party is proud to associate itself with millions of Americans who have protested the Mundt-Nixon bill and have urged its defeat.

As the minority report of the Senate Judiciary Committee (Rept. 1358, pt. 2), points out:

"In the atmosphere created by this bill the American tradition of freedom could only stifle and die. That is why the trade-union movement represented by the AFL, the CIO, and the Brotherhood of Railroad Trainmen, has expressed its vigorous opposition to this bill. That is why the National Farmers' Union has opposed the principles which underlie this bill. That is why the National Association for the Advancement of Colored People and the American Jewish Congress have expressed their opposition to such a bill. That is why the American Civil Liberties Union and the National Lawyers Guild have opposed the bill. That is why the most distinguished constitutional lawyers, including those whose opinions were sought by the Senate Judiciary Committee, have said that the principles which underlie this bill are repugnant to the Constitution, which every Senator is sworn to uphold. These authorities include the late Charles Evans Hughes, Jr.; John W. Davis; Seth W. Richardson, chairman of the Loyalty Review Board; and Zechariah Chafee, Jr., of Harvard."

To these, can be added the Association of the Bar of the City of New York, which has issued a report opposing passage of the Mundt-Nixon bill.

Instead of enacting this legislative blueprint for fascism, the American Labor Party calls upon Congress to meet the real needs of the people. Enact the Powell FEPC bill, together with antilynch and antipoll tax legislation. End the cold war and outlaw the manufacture of the H-bomb. Expand social-security. Pass a national health insurance bill. Meet the acute crisis in our schools by Federal aid to education, including a specific prohibition of discrimination against or segregation of Negro children in the schools receiving such aid. Increase the minimum wage to $1 per hour, with expanded coverage under the Fair Labor Standards Act. Build low rent public housing. Extend and strengthen Federal rent control.

These are on the agenda of the people of America.

They should be on the agenda of Congress.

STATEMENT ON H. R. 7595 FILED WITH THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES BY REV. WILLIAM H. JERNAGIN, ON BEHALF OF NATIONAL FRATERNAL COUNCIL OF NEGRO CHURCHES, U. S. A., INC., AND NATIONAL BAPTIST SUNDAY SCHOOL AND BAPTIST TRAINING UNION CONGRESS

Mr. Chairman, I appear before your committee in my capacity as national affairs consultant, executive board member, and past president of the National Faternal Council of Negro Churches, U. S. A., Inc., with offices at 318 Third Street SW., Washington, D. C. The council represents 11 denominations and 7,000,000 Negro church members throughout the country. I also appear on behalf of the National Baptist Sunday School and Baptist Training Union Congress, of which I am president.

We have reviewed the Mundt-Nixon bill, published March 7, 1950. In our opinion, it will not eliminate un-American activities. All information and statistics known to us show that the problems experienced by every person or persons in every sphere of American life hit with double impact upon the nonwhites, of whom Negroes comprise the majority. It is being increasingly recognized by Negroes, therefore, that the decisive test of any bill or measure designed to alleviate the basic problem facing American citizens must turn on the degree to which the program or measures operate fully and effectively for all races by equalizing, more or less, their opportunities throughout American life.

Instead of studying the Mundt-Nixon bill, therefore, we feel this committee should be studying ways of eliminating the real un-American practice of denying

equal opportunity in America to Negroes, which prevents them from developing and utilizing their human and material resources. We firmly believe that a basic change must occur in the un-American conditions of inadequate educational facilities for Negroes, poor housing, poor health facilities, high taxation without representation, and the lack of jobs and positions where qualified.

The church is also aware of the effects that the Mundt-Nixon bill will have on the millions of American citizens whose deep, abiding desire is world peace. Under the disguise of seeking out subversive action, it will prohibit those citizens from speaking for peace. We point out, Mr. Chairman, that world peace is not to be attained by depriving our people of their constitutional rights of speech and action, but by creating for them an opportunity in which to develop normal, healthy lives. The world looks to America for guidance, the role of leadership is ours. We must, therefore, possess a moral and spiritual responsibility commensurate with our position of leadership.

The Mundt-Nixon bill would set up a false idol on the altar of American democracy. It would destroy freedom of conscience, and substitute for individual judgment the arrogant decree of Government authority. It would, in effect, tell the American people that they could no longer think for themselves, but would have to accept the opinion of a Government board in Washington on matters in which the people are vitally concerned. It has been our experience that any organization which has ever taken leadership in the struggles of the Negro people was always accused of being "radical" or "subversive," or in recent years, "Communist." A former leading member of this very committee, Representative Rankin, repeatedly made that charge against advocates of the FEPC, and against those who wanted to abolish segregation in our Nation's capital.

On February 22, 1950, during the debate on the FEPC bill in the House, Representative Rankin said: "You are driving through here a piece of communistic legislation that Stalin promulgated in 1920." During the same day's debate, Representative Murray, of Tennessee, made a similar statement. He said, "Article 123 of the Constitution of the Union of Soviet Socialist Republics is the authority and forerunner for this type of vicious legislation * * *. It would be a serious blow to our present form of government and would finally result in a totalitarian form of government." These statements are reported on pages 2223 and 2224 of the Congressional Record. It is pretty obvious that if Congressmen Rankin and Murray, or any men who think as they do, were given the power to administer the Mundt bill, support of the FEPC bill would be outlawed.

Now we observe that in this very bill before you, the basis is laid for suppressing all legitimate struggles of our people, on the same grounds. In section 14, paragraph F of H. R. 7595, are listed the factors to be considered by the proposed Government board in deciding what organizations are to be listed as subversive. Foremost among these factors is "the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist political organization."

Thus, under the guise of combating communism, the bill would effectively stop all protests on the part of our people against social and economic injustices, and it would intimidate those white persons of good will who seek to apply the Golden Rule which implies treating all men as brothers, regardless of race and color. Since the Communist Party is known to advocate passage and enforcement of laws extending equal rights to Negroes, the leading Negro organizations of the country certainly "do not deviate" from the Communist position on this important matter of policy.

The convention during our recent annual session of the National Fraternal Council of Churches, April 25–27, 1950, in Buffalo, N. Y., unanimously adopted the following resolution regarding this bill:

"Whereas the Mundt-Nixon bill at present before Congress of the United States of America will, in our opinion, end several cardinal principles of our way of living, namely, freedom of speech, and freedom of assembly and other such freedoms;

"*Be it resolved*, That this organization go on record as opposing its passage; and be it further

"*Resolved*, That we make clear the fact that we are convinced of the intent and design of the bill to destroy and deprive citizens of the freedoms aforementioned: and that we should make a direct appeal to the Senators and Congressmen

from our several districts throughout the Nation urging that they use their good offices and suffrage to defeat the passage of this bill; and be it further

"*Resolved*, That we request our people in every hamlet and town to make this appeal to their respective Senators and Congressmen."

Respectfully submitted.

Dr. A. C. Williams, *Chairman*.
Dr. O. M. Locust, *Secretary*.
Rev. J. W. P. Collier, Jr.
Bishop R. C. Lawson.
Rev. J. R. Plummer.
Rev. J. W. Hawkins.
Rev. A. Burton.

Passed by unanimous vote Thursday, April 27, 1950, E. Franklin Jackson, Secretary.

This bill would bring concentration camps to America, and Negroes would be the first to fill them. Negroes will not give up the fight for full freedom, no matter how much terror is inflicted upon them. They will continue to fight today as they did during the days of slavery. However, they have the right to wage that struggle without the shackles of the Mundt-Nixon bill.

I say to you, gentlemen, with all gravity and sincerity that the Negro people, from long and bitter experience, know how to recognize a lynching. The Mundt-Nixon bill is an attempt to lynch the Negro people with a political tar and feathers. We are as much threatened by this red tar as our people have been by the kind the Klan has used against us.

May God our Father in whom we live and move and have being, keep this Nation free from fetters that bind until it shall become indeed the "land of the free and the home of the brave."

Statement of Loran Transue, President of Friends of the American Constitution, on H. R. 7595, Before the House Un-American Activities Committee

Mr. Chairman and members of the Committee, I am Loran Transue, 1000 Askew Avenue, Kansas City 1, Mo.

As president I present this statement officially for the Friends of the American Constitution.

It is our purpose to see that our system of government is not destroyed for we do not want our Nation to be destroyed, or to perish, or to be weakened.

We oppose socialism, fascism, and communism for they are not in harmony with our constitutional system.

We do believe that the people who are classed as subversive are taking advantage of the American people and the freedom granted. They are stretching the meaning of the Constitution of the United States. Their doctrines, creeds, and philosophy are of such nature that these people would ultimately destroy our constitutional system by various means and methods. We are fully aware that these people have taken undue and unscrupulous means and devices to gain their point. They have even cried their constitutional rights are being denied them. In our judgment our Constitution does not grant them rights of protection and freedom while they work to destroy that same Constitution.

The only thing we would say in criticism of this bill—it covers only one class of people who would be happy to destroy our Constitution with its freedom and liberty—is that it does not cover the socialistic and Fascist elements or groups. These could be included in this bill as they accomplish the same ultimate end. They work in a different manner.

We believe that if justice was meted out to them they could and would be classed as traitors of this Nation and due penalty accorded them as any other person or group who would be a destroyer of the Nation.

So far as this bill goes as stated above we agree with it. It being one class of legislation that should have top priority. It is urgent that something of this type be enacted into law at once.

I thank you.

(Statement of Mrs. Mary Church Terrell, National Association of Colored Women):

WASHINGTON 9, D. C., *May 5, 1950.*

Hon. JOHN S. WOOD,
Chairman, House Committee on Un-American Activities,
House of Representatives, Washington, D. C.

DEAR MR. WOOD: I have asked for an opportunity to testify against H. R. 7595 as a representative of the National Association of Colored Women in my capacity of honorary president and one of its founders. In accordance with your instructions, I am submitting my views in writing for inclusion in the committee's record of the hearings on this bill.

I am opposed to passage of this bill because I believe it violates the Constitution of the United States in that it proposes to establish a new basis on which citizens of this country may be considered loyal or disloyal to our Government.

The first amendment to our Constitution makes it clear that Congress shall pass no law that denies freedom of speech or assembly. This bill establishes its own standard of what constitutes subversion in this country and then proceeds to build up an elaborate set of rules and regulations by means of which the Government can have citizens arrested, jailed, and fined for membership in organizations which a Government board may deem to be subversive.

As a colored woman, with more than half a century of experience in national and international affairs, I am fully aware of the fact that nothing in this bill is said about the real subversives in this country—the Ku Klux Klan and the Gerald Smith gang—those who would destroy democracy by force and violence, those who have lynched, burned at the stake, who have more than once torn unborn babies from the bodies of colored women and struck terror among colored people as a means of denying them their constitutional rights.

Not content with utilizing every means, legal and illegal, the courts, State laws, and every known device, including mob violence, those who are determined to deny colored people their rights, now confront us with a bill that claims to be leveled against Communists, but in fact will deny my group the right to carry on their justified fight for freedom and full citizenship.

Under this bill colored people and their organizations can be arrested for fighting against Jim Crow because Communists are opposed to Jim Crow. They can be arrested and jailed for demanding that the Ku Klux Klan be outlawed, merely because Communists also make this demand. They can be arrested and jailed for joining with white people. I am glad to say there are many white people who also believe that all Americans regardless of race, creed, color, or sex have the right to full citizenship, in carrying on a vigorous campaign to outlaw Jim Crow laws where they now exist.

There are many white people in this country who understand full well that there can be no freedom and security for themselves unless colored people are also free. This bill would make it a crime for these people to join with colored people in carrying forward a joint campaign to change this situation, by calling such joint action subversive. The result of such legislation would be to keep the status quo, and in my opinion, that is just what the authors of this legislation want to do.

As a colored woman, I have two high, hard, heavy handicaps to hurdle, the handicap of race and the handicap of sex. Colored men have only one—that of race. I know something of the struggle for woman suffrage and what undemocratic actions were carried out to deny women the right to vote, all in the name of patriotism. We won that fight despite the fact that the courts, and the legislatures were used in an attempt to stop the march of women toward citizenship and full equality.

As a colored woman, I am aware of the fact that despite the unrequited toil and suffering of my people for 300 years in the building of the South, we are still not accorded the decency and dignity of full citizenship. That is why I believe that no colored person can support the proposals contained in the Mundt-Nixon bill, which would have the effect of denying us the right to carry forward this struggle because many southern Representatives in Congress, many judges in the courts would characterize such struggle as subversive because it was supported by Communists or organizations which the Government claimed were dominated by Communists.

This minute there are four or five people in the world whose complexions are colored or dark to every one whose face is white. Passage of this bill will remind these people that Jim Crow, white supremacy, and other undemocratic guides to

living in America represent the answer to their please for democracy. Passage of this bill will represent another evidence to the millions of people in Asia and Africa and the Middle East that they need not look to the United States of America in their fight for full democracy. I do not see how anybody, black or white, who loves this country, can favor this legislation which will cause three-fourths of the people of the world who are colored to hate the United States. It is not impossible to imagine a situation where friendly relations with the colored people of the world instead of being hated by them might save this country from destruction.

Rather than pass this bill, I say to you gentlemen that it is high time that we passed legislation to guarantee that the Constitution will be upheld for all the citizens of this country. We need to pass legislation making it a crime to discriminate, lynch, and deny voting rights to millions of colored people living as subcitizens in this country which violates the Constitution and causes men illegally elected who misrepresent them, to be sent to the Halls of Congress, as is the case today. The real subversives in this country are the Ku Klux Klan and similar organizations which would rather murder my group than agree that they should have full citizenship.

Only by guaranteeing the right to political dissent, a right which is a part of our Bill of Rights, can colored people be assured of winning their long fight for freedom. This bill would put a road block in the path of that fight. That is why I am irrevocably opposed to it.

Mrs. Mary Church Terrell.

Statement of L. Harold DeWolf, Professor of Systematic Theology, Boston University School of Theology, Boston, Mass.

STATEMENT ON THE MUNDT-FERGUSON BILL (S. 2311) AND THE NIXON BILL (H. R. 7595)

There are two major threats to American liberty today, just as there were two major threats to German liberty in 1932. One is the threat of communism. The other is the threat of denials of Civil Liberties and other devices of totalitarian government undertaken out of fear of communism. Considering the small headway and later reverses which Communists have experienced in our country, the threat of anti-Communist tyranny seems at present to be much the more serious peril as far as internal affairs are concerned.

As a lover of American freedom and as a churchman, I view with the deepest misgivings such action as is contemplated in this bill. Nothing is more important in the legal defense of our liberties than the strict definition of acts for which a citizen may be prosecuted. Every tyranny is characterized by the substitution of the judgment and will of government officials for the strict and precise processes of law. This bill is a most alarming step in the direction of tyranny. The looseness of definition, the proscription of certain political organizations as such, the possibility of condemnation for mere association or even for the unintended identity of certain temporary purposes with similar purposes of outlawed organizations all make possible an almost unlimited discretionary power on the part of a government board to persecute at will citizens and groups taking stands not approved by the party in power.

Gentlemen, you cannot resist tyranny by legalizing tyranny. This bill would legalize tyranny and make all citizens dependent on the benevolent wisdom of officials endowed with such power as a healthy-minded democracy cannot tolerate.

Such bills as this strike especially seriously at the American right of religious freedom. No church worthy of the name can regard itself as placing its faith and teaching under the control of a state. The church, if it is to be the church at all, must be free to formulate its faith and teach its doctrine without asking whether such formulation and teaching will please the political authorities. The most responsible Christian authorities in the world, including Pope Pius XII and the World Council of Churches, have published sharp criticisms of governmental policies and economic systems including capitalism and western democracy as well as the Communist despotism of the Soviet Union. Within the United States such a prominent churchman as Monsignor Fulton J. Sheen has in the name of religion made more radical criticisms of capitalism than have been made by many of the less-known persons and ecclesiastical agencies whose utterances have been interpreted by our Government agencies as subversive. In a democracy

it is intolerable when only the famous and politically well-organized can possess and use religious freedom.

Freedom is protected by being practiced and loved. There could be no more insidious preparation for communism or any other totalitarian despotism than to teach Americans the habit of forming their thought, determining their speech, and selecting their associations in an atmosphere of fearful inquiry whether Communists might be taking similar courses or whether present political authorities might disapprove. When men have once learned to submit to such abrogation of their liberties it is a simple thing to change masters. Great numbers of Hitler's storm troopers have illustrated this fact by easily changing to the uniform of the so-called people's police under the new master, Stalin.

If our liberties are to be secure they must be practiced, and we must have faith in them, from the Halls of Congress to every village, church, and home. The bill before you expresses faith in the principles and methods of the police state, not faith in freedom. In the name of all that we cherish as Americans I beg of you to defeat it.

STATEMENT OF THE METHODIST CHURCH, BOSTON AREA, BISHOP JOHN WESLEY LORD, BOSTON 16, MASS.

STATEMENT ON THE NIXON BILL (H. R. 7595) TO BE PRESENTED BEFORE THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES

It needs to be remembered that the totalitarian has conquered when a democratic people abrogates its civil liberties and adopts totalitarian techinques to meet totalitarian threats.

I am opposed to the Nixon bill because it does just this and, if passed, would abrogate America's long-cherished freedom. I sincerely believe, as a churchman seeking to perpetuate the spiritual principles upon which this Nation is founded, that legislation of this pattern is more in accord with police-state governments than it is with democratic governments, and ultimately will destroy the rights of a free people.

There is an element of risk ever present in a democratic state. This risk, we must take if we are to maintain our faith in man and his essential dignity before God. To seek to remove this risk by destroying a political party is to jeopardize the rights of all political parties in our land. Our faith in present American institutions is such that we believe subversive elements can be contained and made ineffective, if we have the will to do so, by present existing legislation. I cannot believe that this proposed legislation could make our Government more secure than it is; for, ultimately, all security must reside in the free will and consent of those who are governed. To penalize those who may differ with us is to aggravate and not to remove the cause of discontent.

Communism is an ideology that must be answered by a better ideology that demonstrates its ability to bring more of liberty, equality, and fraternity to mankind. A dynamic democracy in which the ethical ideals of religion are, within the conditions of freedom, translated into the realities of justice and brotherhood is impregnable to Communist infiltration, however virulent.

The Nixon bill, by setting up a "Subversive Activities Control Board" to prepare a list of "Communist-political" and "Communist-front" organizations, by granting the right to impose harsh penalties on members of such organizations, and by severly penalizing individuals who aid such proscribed organizations, does not strengthen but rather weakens democracy in America. Thus, I oppose it as un-American and contrary to the highest spiritual and political interests of our country. If this theory of government were accepted, it could lead to, and make secure, a totalitarian dictatorship in this country.

STATEMENT ON H. R. 7595 BY MR. NIXON TO HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES BY BENJAMIN C. MARSH, SECRETARY, PEOPLE'S LOBBY, INC., WASHINGTON, D. C.

This bill is one of the most subversive and futile efforts to create a crime, instead of directly outlawing the Communist Party, since that seems to be the purpose.

It should be noted that the bill gives by inference, approval of a home-brew "totalitarian dictatorship," since it makes it illegal to work for such, "the direc-

tion and control of which is to be vested in, or exercised by or under the domination or contol of, any foreign government, foreign organization, or foreign individual."

Mr. Nixon evidently believes in a protected market.

If the Communist Party is legal, it is subversive of both intelligence and of law to try to make scapegoats of those acting as or for a party, unless they commit a crime.

This committee should ask the Supreme Court, at once, for an advisory opinion on the constitutionality of the bill, and the Supreme Court might appropiately tell you what parts of the Constitution should be repealed or amended to make the bill constitutional.

The Court might also, in more judicial language than I can command, tell you that inflation is a greater threat to America's well-being, than the Communists, backs or fronts, and that if any government agency hasn't discovered employees who have betrayed their country, or attempted to, and prosecuted them, the chiefs of such agency should be relieved of office for inefficiency.

Just as we are learning that finesseing, to use a bridge term, is sometimes more effective in a cold war than force, we are also learning that ending internal conditions which produce believers in or advocates of extreme measures, is much more efficacious than increasing the list of acts or failure to act, punishable by incarceration, fine, or economic, or physical death.

There is a widespread feeling in America that much of the alarm over Communists is a cover up for alarm about economic conditions here, over which Communists have no control.

The greater the scare about Communists the easier it is to get billions for jobs producing armaments, which the people condone, while they would rebel against such expenditures for constructive domestic purposes.

The military hierarchy in America owe a great debt of gratitude to Communists here and abroad, whose activities keep them in power, while an efficient government would evolve policies which would greatly reduce the attempted justification for the military splurge.

Our inane foreign policies have also helped Communist activities, but suppressing Communist sympathizers will not end our domestic or foreign policies.

Your committee in the past has been markedly tolerant of subversive activities of American cartelists who doubtless are sizable contributors to both major parties.

In May 1947 we wrote the President asking whether Americans found guilty of the practices for which German industrialists were about to be tried could be punished, and July 29 of that year, Assistant Attorney General John F. Sinnott wrote us in reply to our question:

"The basic charges contained in the pending cartel indictments in Germany are not comprehended by existing legislation in the United States.

"To that extent, therefore, the only recourse is to Congress."

We promptly sent copies of our correspondence on this kind of subversive activities, with the President, and the State and Justice Departments, to the then chairman of your committee, J. Parnell Thomas, asking the committee investigate and draft legislation to meet the conditions, and giving a list of informed witnesses.

Mr. Thomas replied that he had read the correspondence and would refer the matter to the committee, but repeated requests to your committee to act, have been bipartisanly ignored. It is notorious that your committee, so anxious to save America from control by a foreign state, has ignored the fact the Vatican has for centuries tried to dominate the world, not by armed forces, but by a cold war, capitalizing inherent fear of the unknown hereafter, to get obedience to its earthly reaction, and it is probably the most corrupt and reactionary state in the world.

Stalin doubtless borrowed the idea of the cold war from the Vatican, but he never sank so low, as to pretend to determine what would happen to people after death.

If Mr. Nixon is sincere in his fear of attempted overthrow of our Government by a foreign state, he would treat Catholics as he does Communists.

There should be parity of treatment in a country where all people are supposed to be equal before the law.

For full information your committee can call on Paul Blanshard, author of American Freedom and Catholic Power, and Avro Manhattan, author of The Vatican in World Politics.

We suggest again your committee get an advisory opinion on the Nixon bill from the Supreme Court, because America doesn't want to be stamped a Fascist nation in the eyes of the world. Also, to prove the purity and patriotism of your efforts to save America, your committee might ask immediate action by Congress to require every Federal employee getting over $3,000 salary, to file a sworn statement of stocks and bonds he and his family own, corporations or enterprises with which they are or have been within the past 3 years connected in any way, and land and other real estate they own, except that they use personally.

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